

1                   UNITED STATES DISTRICT COURT  
2                   DISTRICT OF MASSACHUSETTS  
2                   WESTERN SECTION

3

4       UNITED STATES                   \*           Docket No. 20-MJ-03061

5       VS.                           \*           Springfield, MA  
6

7       JOHN RATHBUN                   \*           April 29, 2020

8       \*       \*       \*       \*       \*           12:40 p.m.

9

10                   EXCERPT OF THE VIDEOCONFERENCE HELD  
11                   BEFORE THE HONORABLE KATHERINE A. ROBERTSON,  
12                   UNITED STATES MAGISTRATE COURT JUDGE.

13

14

15

APPEARANCES:

16       For the Government: STEVEN H. BRESLOW, Assistant  
17                   U.S. Attorney, 300 State Street, Springfield,  
17                   Massachusetts 01105.

18       RISA BERKOWER, Assistant U.S. Attorney,  
19                   950 Pennsylvania Avenue NW, Washington, D.C.  
19                   20532.

20       For the Defendant: TIMOTHY G. WATKINS, ESQUIRE,  
21                   Federal Public Defender Office, 51 Sleeper  
21                   Street, 5th Floor, Boston, Massachusetts 02210.

22

23

24

25                   Sarah L. Mubarek  
25                   Registered Professional Reporter

1

I N D E X

2

WITNESS                           DIRECT    CROSS    REDIRECT    RECROSS

3

DEREK BOUCHER

4

(By Mr. Breslow)

3

97

(By Mr. Watkins)

45

103

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1                   THE COURT: Mr. Breslow, I will turn  
2 this over to you. The government may call its first  
3 witness.

4                   MR. BRESLOW: Your Honor, we'll  
5 reserve argument for after Special Agent Boucher has  
6 concluded his testimony and left the virtual  
7 courtroom.

8                   THE COURT: Thank you.

9                   MR. BRESLOW: What we're going to  
10 plan to do is I'll conduct the direct and redirect  
11 of the special agent, and then Ms. Berkower will  
12 conduct the oral argument following his testimony.

13                  THE COURT: That's fine. Thank you.  
14 Ms. Rivera, why don't you swear in Agent Boucher.

15                  THE CLERK: Yes, your Honor.

16                  The witness, DEREK BOUCHER, having been  
17 duly sworn, testifies as follows:

18                  THE COURT: Proceed, Mr. Breslow.

19                  MR. BRESLOW: Yes, your Honor.

20                  DIRECT EXAMINATION BY MR. BRESLOW

21                  Q. Can you please state your name and spell  
22 it for the record?

23                  A. Derek Boucher, D-e-r-e-k, B-o-u-c-h-e-r.

24                  Q. How are you employed?

25                  A. I'm an FBI special agent.

1           Q.     How long have you been employed as a  
2     special agent with the FBI?

3           A.     Since 2006.

4           Q.     Where are you currently assigned?

5           A.     I'm assigned to the Springfield FBI  
6     office in Massachusetts.

7           Q.     And what is your current assignment?

8           A.     I'm a special agent on the Joint  
9     Terrorism Task Force.

10          Q.     Please describe briefly for the Court  
11     what the Joint Terrorism Task Force is.

12          A.     The Joint Terrorism Task Force is an  
13     FBI-led task force which includes other federal,  
14     state, local police agencies, which primary  
15     responsibility is to investigate terrorism.

16          Q.     Is that both domestic and international?

17          A.     Yes, it is.

18          Q.     Are you familiar with the FBI's  
19     investigation of the defendant, John M. Rathbun?

20          A.     Yes, I am.

21          Q.     Are you the case agent?

22          A.     No, I'm not.

23          Q.     Who is the case agent?

24          A.     Ryan McGonigle.

25          Q.     Please describe for the Court your own

1 personal involvement, if any, in the FBI's  
2 investigation of Mr. Rathbun.

3 A. I've been involved in running database  
4 checks, open source research, meetings virtually and  
5 telephonically in preparation for this preliminary  
6 hearing, and I've also been involved in the  
7 perimeter security and surveillance of the search of  
8 the defendant's residence on April 15th.

9 Q. By open source research, what do you  
10 mean?

11 A. I conducted a review of Google Maps and  
12 some general research on JGS, the company which owns  
13 the property that the device was placed in.

14 Q. Would that include, among other things,  
15 reviewing websites that are publicly available?

16 A. Yes, that is correct.

17 Q. And did you in fact create two exhibits,  
18 Government Exhibits 9 and 10, based on your open  
19 source research using Google Maps?

20 A. Yes, I did.

21 Q. Other than what you've just identified,  
22 do you have any other involvement in the  
23 investigation?

24 A. No, I do not.

25 Q. What have you read to prepare for your

1       testimony today?

2           A.     I've read the criminal complaint,  
3     corresponding affidavit. I've read an affidavit by  
4     the gas company, Scepter, the canister company.  
5     I've read the search warrant affidavit. I've read  
6     the Longmeadow Police Department report, and I've  
7     read multiple Massachusetts State Police Crime Lab  
8     reports.

9           Q.     In addition have you read what's called  
10    an FD-302, commonly known as a report of the  
11    defendant's interview on April 15th?

12          A.     Yes, I read that as well.

13           MR. BRESLOW: I want to focus now on  
14    Government Exhibit 1, which is already in evidence.  
15    Your Honor, I'm going to share my screen so that the  
16    Court can see this item as well.

17           THE COURT: All right. Just so you  
18    know, Mr. Breslow, I actually have copies of the  
19    majority of the exhibits.

20           MR. BRESLOW: Okay.

21           THE COURT: The other participants  
22    won't be able to see the exhibits. So I think if  
23    you want to point to any particular aspect, it may  
24    be helpful to show that on your screen, but  
25    understand that I am able to follow on a paper copy.

1                          MR. BRESLOW: Okay. Mr. Watkins, are  
2  you able to do the same?

3                          MR. WATKINS: As far as what? I'm  
4  not understanding.

5                          MR. BRESLOW: Well, I offered to  
6  share my screen and display the exhibit on the  
7  screen. The Court indicated that she has paper  
8  copies of nearly every exhibit. What I'm asking you  
9  is, I know you have digital copies of all of the  
10 exhibits, but can you follow along without me  
11 sharing the screen or would you prefer me to share  
12 the screen?

13                        MR. WATKINS: Yes, I can follow along  
14 without the screen.

15                        MR. BRESLOW: Okay. If at any point  
16 Mr. Watkins or your Honor would like me to share the  
17 screen, I'm happy to do that. I believe that the  
18 agent has copies of all the exhibits as well at his  
19 desk.

20                        THE WITNESS: That is correct.

21                        Q. So I'm focusing you now on Government  
22 Exhibit 1. What is it?

23                        A. This is a criminal complaint and  
24 corresponding affidavit, signed April 15th, 2020,  
25 with the defendant being John Rathbun.

1 Q. And who was the affiant?

2 A. Special Agent Ryan McGonigle.

3 Q. And that is the person that you  
4 identified as the case agent for the FBI of this  
5 investigation?

6 A. That is correct.

7 Q. I want to focus you on paragraph 18,  
8 which is on page six of the complaint.

9 A. Okay.

10 Q. On April 2nd, 2020, what did the  
11 Longmeadow Police Department discover at the  
12 entrance of Ruth's House?

13 A. The Longmeadow Police Department  
14 discovered a homemade incendiary device at the  
15 entrance of Ruth's House.

16 Q. And what time approximately did the LPD  
17 discover the device?

18 A. At approximately 10 a.m. on April 2nd.

19 Q. Where approximately did the LPD discover  
20 the device? Where was it located?

21 A. It was at the entrance of Ruth's House,  
22 located within a few feet of a widely used  
23 pedestrian walkway on Converse Street.

24 Q. And how did Special Agent McGonigle  
25 describe Converse Street in particular?

1           A.       He described Converse Street as a very  
2     busy main road in Longmeadow, and approximately 50  
3     yards away from Ruth's House.

4           Q.       So the device itself was located at the  
5     entrance, but approximately 50 yards away from the  
6     facility?

7           A.       Yes, that is correct.

8           Q.       Focusing you on paragraph 19, what other  
9     Jewish institutions and facilities are located in  
10    the near vicinity of Ruth's House?

11          A.       Three Jewish temples, a Jewish private  
12     school, and a Jewish community center are within  
13     approximately one square mile of Ruth's House and  
14     where the device was placed.

15          Q.       I want to focus you now on paragraph 20  
16     which is on the following page, seven. What did the  
17     device consist of?

18          A.       The incendiary device consisted of a  
19     five-gallon plastic Scepter gas canister filled with  
20     liquid believed to be flammable gas, along with  
21     burnt paper placed in the nozzle of the canister.

22          Q.       And what was the burnt paper later  
23     identified to be?

24          A.       The burnt paper was later identified to  
25     be a Christian religious pamphlet.

1           Q.       And is Scepter a common and widely  
2 distributed brand of gasoline and diesel containers?

3           A.       Yes, they are. They're sold in a variety  
4 of stores located throughout the United States,  
5 including Home Depot and Lowe's and stores like  
6 that.

7           Q.       Okay. Again focusing on paragraph 20,  
8 what did the Longmeadow Police Department observe  
9 with respect to both the canister and the pamphlet?

10          A.       The Longmeadow Police Department observed  
11 that there appeared to be bloodstains both on the  
12 canister handle and on the Christian pamphlet.

13          Q.       And what did the police department do  
14 with respect to both the canister and the pamphlet?

15          A.       The Longmeadow Police Department  
16 transferred the canister and the pamphlet to the  
17 Massachusetts crime lab in Springfield.

18          Q.       And on April 6th, 2020, what did the  
19 crime lab do with the suspected bloodstains on both  
20 the canister and the pamphlet?

21          A.       The crime lab tested the samples of the  
22 stains on both the canister and the pamphlet, and  
23 determined that the samples are human blood. The  
24 crime lab identified a male DNA profile from each of  
25 the samples.

1           Q.       On April 9th, 2020, what did the MSP  
2       Crime Lab determine with respect to each of the male  
3       DNA profiles taken from both samples?

4           A.       The crime lab determined that the DNA  
5       profile left on the gas can and the pamphlet were  
6       linked to the DNA profile of Rathbun.

7           Q.       And how did the crime lab make that match  
8       or that link?

9           A.       The Massachusetts State Police Crime Lab  
10      confirmed the DNA match through a search of the  
11      Consolidated DNA Index System or CODIS.

12          Q.       What is CODIS?

13          A.       CODIS is an FBI database that stores  
14      convicted offender and arrestee DNA profiles, and  
15      allows state, local or federal agencies the ability  
16      to search the genetic DNA profile of an unidentified  
17      subject.

18          Q.       Focusing on paragraph 23, without going  
19      into detail, according to Mr. Rathbun's criminal  
20      history records, did he have a number of arrests and  
21      convictions that would have resulted in his DNA  
22      being taken from him and placed into the CODIS  
23      database?

24          A.       Yes, he had.

25                    MR. BRESLOW: Your Honor, I want the

1 record to reflect that the dog barking is not coming  
2 from my home.

3 THE COURT: All right.

4 Q. I want to focus you now on April 11th,  
5 2020.

6 A. Yes.

7 Q. Paragraph 24. On that day what did this  
8 Court, meaning Magistrate Judge Robertson,  
9 authorize?

10 A. A search warrant for Rathbun's person,  
11 his residence in East Longmeadow, and three vehicles  
12 that were registered to his mother.

13 Q. And where did his mother live?

14 A. At 20 Lori Lane in East Longmeadow with  
15 the defendant.

16 Q. And we'll just call that the residence  
17 for short.

18 A. Okay.

19 Q. Focusing on paragraph 25, when did the  
20 FBI execute the search warrants for Mr. Rathbun's  
21 residence, the three vehicles located there and his  
22 person?

23 A. On April 15th at approximately 7:45 a.m.

24 Q. Did you, sir, participate in the search?

25 A. No, I did not.

1           Q.     What did you do, if anything, that day  
2 regarding the search?

3           A.     I was involved in the surveillance prior  
4 to the search, and also the perimeter security while  
5 the search was ongoing.

6           Q.     Did Special Agent McGonigle participate  
7 in the search activities that day?

8           A.     Yes, he did.

9           Q.     Again focusing you on paragraph 25, who  
10 did Special Agent McGonigle locate and interview  
11 during the search?

12          A.     The defendant.

13          Q.     Before interviewing the defendant, what  
14 did Special Agent McGonigle do to ensure that  
15 Mr. Rathbun understood his Miranda rights?

16          A.     He was advised of those rights, which he  
17 waived both orally and in writing.

18          Q.     What did Special Agent McGonigle observe  
19 regarding Mr. Rathbun's hands?

20          A.     He had observed that there were numerous  
21 cuts or wounds in various states of freshness,  
22 including an open wound on his right thumb.

23          Q.     What did Special Agent McGonigle and  
24 other agents locate in the residence, both on the  
25 porch and in the shed?

1           A.       They observed a large plastic gas  
2       canister on the porch, and then other agents located  
3       additional gas canisters in the shed.

4           Q.       After Mr. Rathbun waived his Miranda  
5       rights, what did he agree to do?

6           A.       He agreed to be interviewed.

7           Q.       Who else participated in the interview?

8           A.       Officer Pamela Chaplin from the  
9       Longmeadow Police.

10          Q.       I'm not going to focus you on every  
11       statement that the defendant made as set forth in  
12       the complaint, but just a few. Please focus on  
13       paragraph 25A, sir. What did Mr. Rathbun say to the  
14       officers regarding his morning routine?

15          A.       He noted that he routinely gets up at  
16       approximately 6 a.m., and drives on Converse Street  
17       past the Jewish school in Longmeadow each morning on  
18       his way to a methadone clinic.

19          Q.       And focusing you on paragraph 25, what  
20       did Mr. Rathbun say regarding his own drug use?

21          A.       He initially stated that he last used  
22       drugs approximately one month ago, but later in the  
23       interview he admitted he used drugs, including  
24       cocaine, approximately two weeks prior. Then  
25       further in the interview he agreed to take a drug

1 test, but noted that he would test positive because  
2 he had used a small amount of drugs the night prior  
3 to the interview.

4 Q. I want to focus you on paragraph 25G.  
5 What did Mr. Rathbun say about the gas canisters  
6 that were found at the residence?

7 A. That he and his family never had --

8 Q. Special Agent Boucher, I just want to  
9 orient you. I'm asking you about subparagraph G,  
10 which is located at the bottom of page nine, but  
11 primarily continues on page ten of the pdf.

12 A. I see that. Which subsection under G  
13 though are you referring to?

14 Q. One through four.

15 A. Okay. The can on the porch contained a  
16 50/50 mix of gasoline and another substance used for  
17 a leaf blower. The cans in the shed contained  
18 gasoline which was used for a lawnmower, and that  
19 his mother obtained the gasoline approximately three  
20 weeks ago from a gas station, and that his family  
21 never had a yellow gas canister.

22 Q. Please focus on paragraph H. What, if  
23 anything, did Mr. Rathbun say concerning the device  
24 that was found at the entrance to Ruth's House?

25 A. He denied placing any kind of explosive

1 device at the entrance to Ruth's House, and when he  
2 was informed that his blood was on the gas can, he  
3 could not explain how this was possible.

4 Q. With respect to subparagraph I, what did  
5 Mr. Rathbun say with regard to his mother's  
6 religious activities?

7 A. He noted that his mother was involved in  
8 a local church and distributed Christian  
9 proselytizing pamphlets.

10 Q. And did other agents, meaning other than  
11 Special Agent McGonigle, interview Mr. Rathbun's  
12 mother also that day?

13 A. Yes.

14 Q. And what did she say regarding her own  
15 activity regarding religious pamphlets?

16 A. She stated to other agents that she  
17 printed her own pamphlets to distribute to the  
18 public.

19 Q. What else did she say?

20 A. But she did not recognize the pamphlet  
21 that was found in the incendiary device at Ruth's  
22 House.

23 Q. Lastly with respect to the complaint,  
24 could you focus on paragraph 25J. Did the agents,  
25 meaning Special Agent McGonigle and Police Officer

1       Chaplin, ask Mr. Rathbun whether he knew anything  
2       about the device that was placed at Ruth's House?

3           A.     Yes.

4           Q.     Did they present him with photographs of  
5       the bloodstained Christian pamphlet?

6           A.     They did.

7           Q.     And inform him that his DNA had matched?

8           A.     They did so.

9           Q.     How did Mr. Rathbun react or respond?

10          A.     His demeanor visibly changed, and a short  
11       while later he stated he did know what he was going  
12       to do and wanted to cry.

13          Q.     I'm going to ask you to turn away from  
14       Government Exhibit 1 now, and focus on Government  
15       Exhibit 2 which is already admitted into evidence.

16          A.     Okay.

17          Q.     What is Government Exhibit 2?

18          A.     It's a Longmeadow Police Department  
19       incident report, incident number 20-LON-288-OF.

20          Q.     And the date of the incident report?

21          A.     April 2nd, 2020.

22          Q.     Is this the Longmeadow Police Department  
23       report that's referenced in the complaint about  
24       which you just testified?

25          A.     Yes, it is.

1           Q.     And does it contain narratives of, among  
2     other people, Patrolman Matthew Chaplin and Patrol  
3     Officer Pamela Chaplin?

4           A.     Yes, that is correct.

5           Q.     I want to focus you at the top of page  
6     three, and with respect to this document two, I'm  
7     referring, to the extent that there's any  
8     discrepancy, to the third page of the actual pdf  
9     file.

10          A.     Okay.

11          Q.     So this for reference is the personal  
12     narrative for Patrolman Matthew Chaplin. At the top  
13     it indicates this is page one, meaning page one of  
14     the narrative, but for the record we're focused on  
15     page three of the nine-page document that is  
16     Government Exhibit 2. According to this narrative,  
17     who arrived on the scene before Patrol Officer  
18     Matthew Chaplin?

19          A.     The Longmeadow Fire Department arrived  
20     prior to his arrival.

21          Q.     And in particular who did Officer Chaplin  
22     interact with from the Longmeadow Fire Department?

23          A.     He interacted with Captain Nothe.

24          Q.     What did Captain Nothe inform Police  
25     Officer Chaplin concerning the device?

1           A.       He informed the officer that a yellow  
2       five-gallon gas canister which was located near the  
3       sidewalk to the entrance of the Ruth's House at  
4       Converse Street had burnt paper protruding from the  
5       opening and smelled of gasoline, and he stated it  
6       appeared to be a Molotov cocktail.

7           Q.       And do you understand based upon your  
8       training, experience and general knowledge what a  
9       Molotov cocktail is?

10          A.       Yes, I do.

11          Q.       Can you explain to the Court generally  
12       what a Molotov cocktail is?

13          A.       It is an explosive or incendiary device  
14       that is filled with flammable material, in this case  
15       liquid, in a breakable container that can be thrown.

16          Q.       I'm focusing you now on page four of  
17       Government Exhibit 2. This is a personal narrative  
18       for Detective Ewen MacEachern.

19          A.       Yeah.

20          Q.       M-a-c-e-a-c-h-e-r-n. Focusing you on the  
21       first paragraph, Special Agent Boucher, according to  
22       the reporting party, meaning the party who first  
23       reported to the police the gas canister, when did  
24       she first notice the gas canister?

25          A.       She noticed the yellow gas canister that

1       morning between 8 and 9 a.m. as she was making  
2       breakfast.

3           Q.     And focusing you on the third paragraph  
4       from the bottom of page four, who is Raisa Ilina,  
5       R-a-i-s-a, I-l-i-n-a?

6           A.     She's a resident of Genesis House, which  
7       is located on the property, and she walks along the  
8       property every morning.

9           Q.     And according to Ms. Ilina, did she or  
10      did she not notice the container during her walk  
11      that morning?

12          A.     She did not notice the canister that  
13      morning during her walk.

14          Q.     I want to focus you on the first two  
15      paragraphs of page five, the following page.  
16      Regarding the top paragraph, this is a supplemental  
17      narrative for Police Officer Pamela J. Chaplin, and  
18      just for reference, is this the same officer who  
19      conducted the interview of the defendant with  
20      Special Agent McGonigle on April 15th?

21          A.     Yes, it is.

22          Q.     Focusing you on the top two paragraphs,  
23      what did Police Officer Pamela Chaplin do when she  
24      arrived on scene at the direction of her captain?

25          A.     She was requested to take photographs,

1 which she did so.

2 Q. And are those photographs attached to the  
3 final three pages of the report?

4 A. Yes, they are.

5 Q. We'll get to them in a moment. How did  
6 Police Officer Chaplin observe the device, focusing  
7 on paragraph two now?

8 A. She observed the yellow Scepter diesel  
9 five-gallon gas canister which contained an unknown  
10 liquid placed in the dirt next to the tree. She  
11 also observed burnt paper stuffed in the spout of  
12 the can, and a quick look at the yellow gas can  
13 showed her that there was a bloodstain on the  
14 handle.

15 Q. Now, just to be clear, she didn't confirm  
16 that this was a bloodstain, but it appeared to her  
17 to be a bloodstain based on her observation?

18 A. Based on the narrative here, the words  
19 she used were, "Appeared to."

20 Q. And what did she and/or other people at  
21 the Longmeadow Police do with the gas canister?

22 A. They took the item back, both the  
23 canister and the pamphlet, back to the police  
24 department, tagged it and entered it into evidence.

25 Q. Okay. I want focus you on the large

1       middle paragraph that begins, "Upon arrival back at  
2       the station," on page five.

3           A.       Okay.

4           Q.       What did Captain Fontaine and Police  
5       Officer Pamela Chaplin do when they arrived back at  
6       the station?

7           A.       They removed the partially burnt paper  
8       material that was located in the spout of the yellow  
9       can, and then they noted that after further review,  
10      the paper content appeared to contain religious  
11      material which appeared to have some bloodstains on  
12      said paper.

13          Q.       And who did they contact next after they  
14      observed the bloodstains on the paper?

15          A.       The Massachusetts crime lab in  
16      Springfield and Sudbury.

17          Q.       What did the Longmeadow Police do with  
18      respect to the paper, the canister and the liquid?

19          A.       They emptied the liquid from the yellow  
20      can into another canister which was secured for  
21      testing, and then Deputy Chief Macsata noted through  
22      his training and experience he believed the liquid  
23      to be gasoline, and then they took photographs and  
24      entered into evidence the other items.

25          Q.       I want to focus you on page seven now of

1 the report.

2 A. Okay.

3 Q. Would you describe the photographs on  
4 this page? For reference, if you could, as you're  
5 identifying the photographs, describe them as top  
6 left, top right, middle left, middle right, bottom  
7 left, bottom right.

8 A. Yes.

9 Q. How many photographs are on page seven?

10 A. There are six photographs on this page.

11 Q. Okay. And if you could describe the  
12 photographs with those identifiers and just briefly  
13 describe what they depict.

14 A. Yes. The top left photograph is a  
15 photograph of the entrance into Ruth's House, with  
16 the location where the device was placed to the back  
17 of the photographer, so this is kind of a shot away  
18 from the gas canister. You can see the crosswalk  
19 there, and to the left is the entrance into Ruth's  
20 House, and to the right where those police cars are  
21 located, that's Converse Street.

22 MR. WATKINS: Your Honor, I wonder if  
23 we can share these photographs. I think that would  
24 be helpful.

25 THE COURT: I agree.

1 MR. BRESLOW: Absolutely. One  
2 moment, your Honor, and I will do that.

3 (Pause.)

4 MR. BRESLOW: So can I confirm that  
5 the Court and defense counsel and the witness can  
6 see on the digital screen now what is identified as  
7 page seven of the Longmeadow Police Department  
8 report?

13 MR. BRESLOW: Okay. So what I'll do  
14 with permission of the Court and the consent of  
15 defense counsel is move down through the  
16 photographs, scrolling down two by two, unless you  
17 want to see the entire page, in which case I can  
18 zoom out.

19 THE COURT: I prefer to have you  
20 scroll down. Is that all right, Mr. Watkins?

21 MR. WATKINS: Yes, that's fine.

22 Q. So focusing on the top left, was that the  
23 photograph you just described?

24 A. Yes, it is.

Q. And is that basically taken from the

1 perspective of where the device was located?

2 A. Yes, it appears that the individual  
3 taking the photograph was standing in the proximity  
4 of where the device was located.

5 MR. BRESLOW: So I'm now going to  
6 focus on the top right photograph, and what I  
7 believe I can do, your Honor, is I can reorient the  
8 page so that the photograph which right now is kind  
9 of laterally placed -- never mind. Can your Honor  
10 and Mr. Watkins view the photograph the way it is,  
11 the original way which is positioned laterally?

12 THE COURT: I can.

13 MR. WATKINS: Yes, of course.

14 Q. So if you could describe the second  
15 photograph, the one that's in the top right  
16 position.

17 A. Yes. This is a photograph of the device  
18 itself, which is the yellow can there, and you can  
19 see the nozzle sticking out. You can see the tree  
20 which it's placed next to, and the officer who took  
21 the photograph was standing it appears on the  
22 sidewalk along Converse Street.

23 Q. And what's in the bottom right-hand  
24 corner of that photograph is the sidewalk?

25 A. Yes, that's correct.

1           Q.        Okay. So it appears that the canister at  
2       least in this photograph is located about three or  
3       four feet from the actual sidewalk?

4           A.        Yes, it appears so.

5           Q.        I want to focus you on the middle  
6       photographs. Can you identify the photograph in the  
7       middle right?

8           A.        The middle right, yes. That is an image  
9       of the device taken by the officer standing above  
10      the device, and it shows you the yellow canister.  
11      You can see the burnt paper protruding out of the  
12      nozzle there. It's a close-up, and you can see the  
13      surrounding ground that it's placed on.

14          Q.        Okay. I want to focus you now on the  
15      bottom left photograph. What does that depict?

16          A.        Again that is a photo of the device, the  
17      yellow canister, the nozzle, and you can see the  
18      paper protruding out of the nozzle. Also you can  
19      see behind in the background is the image of the  
20      entrance to Ruth's House which we saw in the first  
21      photo in the top left. You can see the sign. You  
22      can see the street there. You can see the two  
23      police cars, and you can see the stop sign pole  
24      which is directly to the left of the officer in the  
25      background there.

1           Q.       And can you also see the crosswalk  
2       leading from one end of the drive to the other,  
3       continuing on to meet the sidewalk?

4           A.       Yes, you can.

5           Q.       Okay. Can you identify the photograph in  
6       the bottom right?

7           A.       Yes, the photograph in the bottom right  
8       is an image. It appears to be taken not at the  
9       actual scene. It looks to be taken perhaps at the  
10      police department. I'm not sure of that, but it's  
11      an image of the pamphlet which was taken out of the  
12      nozzle.

13          Q.       And the pamphlet has two pages that are  
14       visible. Does there also appear to be another  
15       portion of the pamphlet which is partially charred  
16       in the top left of the photograph?

17          A.       Yes, there is. It looks like they took  
18       the pamphlet apart and there's multiple parts of it.

19          Q.       Okay. And can you just read the two  
20       lines on the left page of the pamphlet?

21          A.       "Will you receive Jesus Christ right  
22       now?"

23          Q.       I want to focus you on page eight of the  
24       report and the top two photographs. Can you  
25       generally describe what these are?

1           A.       Yes. These are additional images of the  
2 religious pamphlet which were taken. They appear,  
3 looks to be the front and back side of potentially  
4 the same image of the cut or tear-out on the bottom  
5 of the pamphlet.

6           Q.       And the middle two photographs, what do  
7 they depict?

8           A.       The middle photograph on the left is  
9 again another image of the pamphlet spread out,  
10 showing the rip in the middle. Then the middle  
11 right photograph is a portion of the paper pamphlet  
12 which was in the crumpled state, and you can see the  
13 burned, charred end on the bottom of.

14          Q.       And the bottom two photographs, can you  
15 describe what they depict?

16          A.       Yes. It looks like the same image that I  
17 just described prior, which is what appears to be  
18 spread out, showing the text and also showing kind  
19 of how the paper had partially lit and burned part  
20 of the way down.

21          Q.       I want to focus on the bottom right  
22 photograph. Can you read the words in red?

23          A.       "How can you pray."

24          Q.       Does it say, "How you can pray"?

25          A.       "How you can pray," yes.

1           Q.        Okay.  And what appears to be located at  
2       the very end of that photograph?

3           A.        There appears to be a bloodstain.

4           Q.        I want to focus you now on page nine of  
5       the report.  Can you identify the top two  
6       photographs?

7           A.        Yes.  These are up close photographs of  
8       the plastic canister taken from different angles.

9           Q.        And can you focus on the top left  
10      photograph?  Does it appear to say, "Diesel fuel,  
11      danger," in either print or stamped letters on the  
12      side of the canister?

13          A.        Yes, it says, "Diesel fuel, danger."  
14          Like you said, it looks like that perhaps was a  
15      raised plastic there.  It looks like there might be  
16      some additional writing below it.  It's hard to tell  
17      from the photographs we're looking at.

18          Q.        Okay.  Can you identify the middle two  
19      photographs on this page?

20          A.        Yeah, the middle left photograph again is  
21      similar, just different angle than the top two, and  
22      then the middle right photograph appears to be a  
23      close-up of the handle.  Again it appears that there  
24      is what appears to be a potential red bloodstain  
25      there on the handle.

1           Q.       Lastly, the bottom photograph, which  
2       there was only one photograph on the bottom. It's  
3       in the bottom left.

4           A.       Yeah, it is showing the front facing side  
5       of the yellow container, and it looks like it has  
6       the original label which the manufacturer would have  
7       put on prior to this.

8           Q.       All right. Now I want to focus you on  
9       Government Exhibits 3, 4, 5 and 6. Can you identify  
10      each of those exhibits by their date and title, and  
11      if you could just start with Government Exhibit 3?

12          A.       Yes. Exhibit 3 is titled Commonwealth of  
13       Massachusetts Department of State Police. It's a  
14       criminalistics report, and the report date is  
15       April 4th, 2020.

16          Q.       And is that for the samples that were  
17       provided by the Longmeadow Police Department to the  
18       State Police Crime Lab?

19          A.       Yes, that is correct.

20          Q.       This report, which is in evidence, that  
21       report is not discussed in the affidavit, correct?

22          A.       Yes.

23          Q.       I want to focus on Government Exhibit 4  
24       and then 5. What is Government Exhibit 4?

25          A.       The Commonwealth of Massachusetts

1       Department of State Police DNA Testing Report, and  
2       the report date is April 6, 2020.

3           Q.       And that's the report that the complaint  
4       affidavit discusses where two male DNA profiles were  
5       obtained from the stains on both the pamphlet and  
6       the diesel can?

7           A.       Yes.

8           Q.       Okay. I want to turn your attention now  
9       to Government Exhibit 5 very briefly. What is  
10      Government Exhibit 5?

11          A.       This is the Commonwealth of Massachusetts  
12       Department of State Police report that's dated  
13       April 9, 2020, and indicating that a search of CODIS  
14       was performed.

15          Q.       And this was discussed in the complaint  
16       affidavit as well, as you testified earlier?

17          A.       Yes.

18          Q.       And according to the report, both of the  
19       stains were linked to the DNA profile that was in  
20       CODIS for the defendant?

21          A.       That is correct.

22          Q.       Okay. Then I want to focus your  
23       attention now on Government Exhibit 6. Is  
24       Government Exhibit 6 discussed in the affidavit?

25          A.       No, it is not.

1                   MR. BRESLOW: I want to focus on  
2 Government Exhibit 6 now. Is this document  
3 available on video to the Court, defense counsel and  
4 the witness?

5                   THE COURT: Not at this moment.

6                   MR. WATKINS: You have to stop  
7 sharing and then start it up again to put on a new  
8 one.

9                   MR. BRESLOW: I see. So I'm stopping  
10 the sharing, and then I have to do a new share  
11 basically every time?

12                  MR. WATKINS: That's correct.

13                  MR. BRESLOW: Thank you, Mr. Watkins,  
14 very much for that.

15                  Q. I want to focus you on Government  
16 Exhibit 6 now. What is Government Exhibit 6?

17                  A. It is the Commonwealth of Massachusetts  
18 Department of State Police DNA Report 2, dated  
19 April 28, 2020.

20                  Q. And according to this report, does this  
21 supersede the earlier DNA testing report which was  
22 the CODIS match?

23                  A. That is correct.

24                  MR. BRESLOW: I just want to focus on  
25 this report, and can I confirm that the Court and

1 Mr. Watkins and the witness can see this on the  
2 screen now?

3 THE COURT: Yes.

4 MR. WATKINS: I can.

5 MR. BRESLOW: You can or cannot,  
6 Mr. Watkins?

7 MR. WATKINS: Yes, I can see what we  
8 can all see here.

9 Q. So what does this report generally find?

10                  A.        It finds that the sample taken from John  
11                  Michael Rathbun matches the DNA samples taken from  
12                  the pamphlet and the diesel gas can.

13 Q. Okay. And when you say the sample taken  
14 from John Michael Rathbun, I want to focus you on  
15 the last page, page two of this exhibit. Who is the  
16 forensic scientist who signed the report?

17 A. Alanna L. Darby, Forensic Scientist II.

18 Q. Did you have the opportunity to speak  
19 with Alanna Darby very shortly before this hearing  
20 began?

21 A. I did.

22 Q. Concerning this report?

23 A. That's correct.

24 Q. I want to focus now on page three. What  
25 did she say concerning the STR results table and the

1 column titled KSS John Michael Rathbun?

2 A. She identified me that the KSS, known  
3 saliva standard, was taken from the sample that the  
4 FBI obtained from John Michael Rathbun on April 15th  
5 during the search.

6 Q. Okay. So on the day of the search, in  
7 addition to the activities that you generally  
8 described and that are set forth in greater detail  
9 in the complaint, did the FBI take a genetic sample,  
10 a DNA sample from the defendant pursuant to both the  
11 search warrant that was authorized by Magistrate  
12 Judge Robertson as well as the FBI's ordinary arrest  
13 booking protocols?

14 A. Yes.

15 Q. And this known saliva sample or KSS, that  
16 is what's referenced in this report?

17 A. That is correct.

18 Q. Okay. So according to the report,  
19 focusing you on page one, what did the state crime  
20 lab or in particular Ms. Darby determine concerning  
21 the known saliva sample when it was compared to the  
22 samples from both the pamphlet and the diesel can?

23 A. That John Michael Rathbun matched the DNA  
24 profile of the samples taken from the gas can and  
25 the pamphlet.

1           Q.     And according to the report, what was the  
2     expected frequency of this profile occurring in any  
3     other individual?

4           A.     One in 568.2 octillion.

5           Q.     And what is an octillion?

6           A.     It's a one followed by 27 zeros.

7           Q.     Okay. So in plain terms, does that mean  
8     that Mr. Rathbun's DNA sample taken by the FBI on  
9     April 15th matched the DNA on both the pamphlet and  
10    the diesel can, and the odds of anybody else, any  
11    other individual person having that same DNA profile  
12    is one in 568 octillion?

13          A.     Yes, that is correct.

14                   MR. BRESLOW: I want to focus you now  
15    on Government Exhibit 7. Can the Court and defense  
16    counsel and the witness see Government Exhibit 7 on  
17    the screen?

18                   THE COURT: Yes.

19          Q.     What is Government Exhibit 7, Special  
20    Agent Boucher?

21          A.     It's an affidavit from Daniel Marshall,  
22    who is an executive at Scepter Manufacturing.

23          Q.     And according to the affidavit -- is it  
24    notarized, by the way, and sworn to by the penalties  
25    of perjury on April 28, 2020?

1           A.       Yes, it is.

2           Q.       According to Mr. Marshall, where does  
3           Scepter manufacture its rugged plastic fuel  
4           containers?

5           A.       Two facilities, one in Miami, Oklahoma,  
6           and the other in Scarborough, Ontario, Canada.

7           Q.       Does Scepter currently manufacture any  
8           canisters in Massachusetts?

9           A.       It does not and never has done so.

10          Q.       I want to focus you now on Government  
11          Exhibit -- well, I want to pause for a moment.  
12          Before I show you the next exhibit, today did you  
13          review the website of the United States Emergency  
14          Information Administration, otherwise known as EIA?

15          A.       Yes, I did.

16          Q.       And does the EIA website contain  
17          state-by-state emergency profiles, including for the  
18          Commonwealth of Massachusetts?

19          A.       It does.

20          Q.       Now, according to the EIA website, as of  
21          July 18th, 2019, does Massachusetts have any crude  
22          oil production or reserves or refineries?

23          A.       It does not.

24          Q.       And according to the same website, are  
25          refined products such as gasoline or diesel

1 primarily transported into Massachusetts through  
2 Boston Harbor from places such as Europe, Canada and  
3 elsewhere in the United States?

4 A. Yes, it is.

5 Q. So if there were in fact gasoline or  
6 diesel in that container that was located on  
7 April 2nd, it would necessarily have had to have  
8 come from outside of the Commonwealth of  
9 Massachusetts?

10 A. Yes.

11 Q. Through some other refinery?

12 A. Yes.

13 Q. Okay. I want to ask you now what entity  
14 owns and operates Ruth's House?

15 A. JGS, which stands for Jewish Geriatric  
16 Services.

17 Q. Now, have you reviewed the JGS website?

18 A. Yes, I have.

19 Q. And did you review it in just the past  
20 several days?

21 A. Yes.

22 Q. Does it describe the various facilities  
23 on the JGS campus in Longmeadow?

24 A. Yes, it does.

25 Q. I want to focus you now on Government

1           Exhibit 8.

2           A.       That number --

3           Q.       I'm sorry, Government Exhibit 9. I'm  
4       sharing now to you, the Court and defense counsel  
5       Government Exhibit 9. Can I confirm that that's  
6       available to everybody?

7           THE COURT: Yes.

8           MR. WATKINS: I see it.

9           Q.       What is Government Exhibit 9?

10          A.       It is a map zoomed in on a part of  
11       Longmeadow, Massachusetts, which shows the JGS  
12       campus and Converse Street kind of cutting through  
13       the center of the map.

14          Q.       And is the JGS campus, at least as  
15       depicted here, on the right side of Converse Street  
16       starting approximately at Althea Drive and running  
17       down along Converse Street on the right side towards  
18       the bottom right of the map?

19          A.       Yes, that is correct.

20          Q.       Okay. I want to focus now with reference  
21       to this map, can you identify the approximate  
22       location where the Longmeadow Police Department  
23       found the incendiary device on April 2, 2020?

24          A.       So you can see a small gray pin at the  
25       intersection of Converse and the entrance to Ruth's

1 House. Yes, right there. So approximately where  
2 that pin was placed is where the device was located.

3 Q. Okay. So the crosswalk that was depicted  
4 is what's crossing parallel to Converse Street on  
5 the road that's labeled Ruth's House on your map?

6 A. Yes, that is right.

7 Q. All right. Now, can you identify where  
8 Ruth's House is for the Court?

9 A. Yes. So if you follow that Ruth's House  
10 Road which is identified, follow that up to the top  
11 right-hand side of the map where you just  
12 highlighted, that is where the Ruth's House Assisted  
13 Living facility is located.

14 Q. And that building is actually identified  
15 with a pin as Ruth's House Assisted Living?

16 A. Yes, that's correct.

17 Q. And generally speaking what function does  
18 Ruth's House provide? What commercial service does  
19 it provide?

20 A. Ruth's House provides a service for  
21 elderly individuals that gives them assisted living,  
22 so they need some care, and they have apartments  
23 there.

24 Q. Now, with reference to the same map, can  
25 you identify for the Court some of the other primary

1       buildings belongings to JGS on its campus?

2           A.       Yes.

3           Q.       Let's start with the building that's  
4       pinned as JGS Lifecare, this very large building.

5           A.       Yes.

6           Q.       What is that?

7           A.       So that is the nursing home facility that  
8       JGS owns in Longmeadow. It's also known as Leavitt  
9       House. They have patients from the surrounding area  
10      who need more intensive care than Ruth's House  
11      provides. It's a nursing home.

12          Q.       And do they generally employ personnel  
13      and accept patients from, as you say, the  
14      surrounding area including Connecticut?

15          A.       Yes, that's correct.

16          Q.       How far is Connecticut from this area of  
17      Longmeadow approximately?

18          A.       Longmeadow is very close to the  
19      Connecticut border. I would say less than two  
20      miles.

21          Q.       Okay. Now, in addition there's a pin  
22      next to the phrase Genesis House. Can you describe  
23      where Genesis House is actually located on this map?

24          A.       Yes. So that pin was placed there by  
25      Google Maps themselves. I didn't place that pin

1       there. So the buildings that you can see the  
2       outline of within the box you just drew is where the  
3       actual Genesis outbuildings are located.

4           Q.     Okay. Because the box that I just drew  
5       on the exhibit won't go the court for the record,  
6       are the three buildings at least of Genesis House  
7       located within a u-shaped circular drive that's  
8       bounded by Converse Street on the left, just above  
9       the pin that says Genesis House?

10          A.     Yes, the three buildings directly above  
11       the pin which says Genesis House are part of the  
12       Genesis House complex.

13          Q.     Okay. And can you explain to the Court  
14       what Genesis House is, what services it provides and  
15       how it functions generally?

16          A.     Yes. So Genesis House is low income  
17       housing for seniors that are independent. So it's  
18       small efficiencies and apartments for seniors who  
19       have their own apartments in an elderly complex.

20          Q.     And do those seniors rent the apartments?

21          A.     They do. They rent the apartments from  
22       JGS.

23          Q.     And are those apartments subsidized in  
24       part in any way?

25          A.     Yes, it's subsidized in part by HUD.

1 Q. And what is HUD?

2 A. Housing and Urban Development.

3 MR. BRESLOW: Your Honor.

4 THE COURT: Yes.

5 MR. BRESLOW: I've received a  
6 notification that a telephone number starting with  
7 617 has entered the waiting room for the meeting,  
8 and my computer at least has two buttons, admit and  
9 see the waiting room. Does your courtroom deputy  
10 have that or does the Court have that?

11 THE CLERK: I have it.

12 THE COURT: I believe Ms. Rivera  
13 does.

14 MR. BRESLOW: So I'm not going to do  
15 anything with respect to this button.

16 Q. Forgive me for interrupting, Special  
17 Agent Boucher. Just with respect to all of the  
18 grounds, meaning the actual physical land that  
19 surrounds this property, on the right side of  
20 Converse Street on what you're describing as the JGS  
21 campus, does JGS maintain these grounds?

22 A. Yes, they do.

23 Q. Meaning the lawns and trees and all that  
24 material?

25 A. Yes, they maintain the grounds for the

1       use of the residents, whether walking or just  
2       spending time outdoors.

3           Q.        Okay. And referring briefly to your  
4       testimony concerning the Longmeadow Police  
5       Department report, that's what Ms. Ilina said she  
6       generally does as part of her daily activities?

7           A.        Yes, a part of her morning routine, she  
8       walks along the JGS campus and sidewalks.

9                   MR. BRESLOW: I want to focus you  
10      now on the final exhibit. So I'm going to stop  
11      sharing this one, and I'm going to share Government  
12      Exhibit 10 with the Court, Mr. Watkins and you. Can  
13      everyone confirm that they are now seeing Government  
14      Exhibit 10 on their screen?

15                  THE COURT: Yes.

16                  MR. WATKINS: Yes, it's there.

17           Q.        What is Government Exhibit 10, which is  
18       already in evidence, Special Agent Boucher?

19           A.        Yes, this is a screen shot taken from  
20       Google Maps Street View which shows the entrance to  
21       Ruth's House, and also Converse Street which you can  
22       see in the middle left-hand. The middle left of the  
23       image, that road there, that's Converse.

24                  You can also see the area where the device  
25       was placed. So if you kind of focus in on the tree

1       which is kind of angled to the left there, about  
2       maybe five, six feet away from the stop sign, the  
3       back side of the stop sign, that is where the device  
4       was placed.

5           Q.        Okay. I want focus you now on the sign  
6       on the bottom right of the image. I'm going to zoom  
7       in on this so that it's more visible to you and the  
8       Court and Mr. Watkins. Can you read for the Court  
9       the sign that is on the bottom right of the image?

10          A.        Yes. It reads Jewish Geriatric Services,  
11       Inc., and then below that it says JGS Family Medical  
12       Care. Below that it says Ruth's House, and then  
13       below that it says Wernick Adult Daycare, and it has  
14       an arrow pointing up the street to the entrance of  
15       Ruth's House.

16                   MR. BRESLOW: Your Honor, I just have  
17       one or two last questions for Special Agent Boucher.

18                   THE COURT: Thank you.

19          Q.        Special Agent Boucher, you indicated you  
20       had approximately 13 years of experience with the  
21       FBI, is that right?

22          A.        That's correct.

23          Q.        Approximately how many years of  
24       experience have you had with the JTTF in particular?

25          A.        I'd say approximately eleven.

1           Q.        Okay.  With respect to both your ordinary  
2        training and experience at the FBI and in particular  
3        your experience with the JTTF, have you acquired a  
4        basic knowledge of how incendiary devices, including  
5        Molotov cocktails and explosives, function?

6           A.        Yes, I have.

7           Q.        And does that include a basic knowledge  
8        of how a device like the one you've been testifying  
9        about would function?

10          A.        Yes.

11          Q.        Assuming it contained gasoline?

12          A.        Yes.

13          Q.        Based on your training and experience,  
14        what could have happened if the device had in fact  
15        contained gasoline and ignited instead of apparently  
16        sputtering out from that fuse?

17          A.        It could have potentially exploded, which  
18        could have harmed individuals and property nearby.

19                    MR. BRESLOW:  I have no further  
20        questions.

21                    THE COURT:  Mr. Watkins.

22                    CROSS-EXAMINATION BY MR. WATKINS

23          Q.        Good afternoon, Agent Boucher.  You've  
24        been with the FBI for how many years?

25          A.        About 13 and a half since 2006.

1           Q.       And part of becoming an FBI agent is  
2        doing training at Quantico?

3           A.       That is correct.

4           Q.       And you learned about all kinds of stuff?  
5        It's basic training for FBI agents, correct?

6           A.       Yes.

7           Q.       And in connection with the Joint  
8        Terrorism Task Force, you undergo additional  
9        training, right?

10          A.       Yes, I've taken different trainings.

11          Q.       This training can focus on all kinds of  
12        organized groups that might be up to crime, right?

13          A.       Yes.

14          Q.       That would include white supremacist  
15        groups?

16          A.       Yes.

17          Q.       Have you investigated cases involving  
18        white supremacist groups?

19          A.       Yes, I have.

20          Q.       And as Mr. Breslow pointed out, you have  
21        specific training in this violation, 844?

22          A.       Can you repeat the question?

23          Q.       You have specific training in this  
24        violation, 18 U.S. Code 844, explosives?

25          A.       No, I would not say I'm an expert on

1 explosives.

2 Q. I didn't say expert, but you've had  
3 training. I think that's what you just told  
4 Mr. Breslow, right?

5 A. Yes, I've had some training that included  
6 some information about explosives.

7 Q. Correct. And that was the basis for your  
8 opinion that this could have hurt somebody or  
9 property that you just gave, right?

10 A. Yes.

11 Q. That's because of the training that you  
12 had in this violation about explosives, correct?

13 A. Yes.

14 Q. Okay. You talked at the beginning of  
15 your testimony about some of the things that you  
16 looked at; the complaint, the search warrant  
17 affidavit, the Longmeadow Police report, and  
18 pictures that we've seen. You've looked at all of  
19 those?

20 A. Yes.

21 Q. And when you looked at those, you've also  
22 compared them with your own observations since you  
23 became involved in the case, correct?

24 A. Can you expound on what do you mean by  
25 other observations?

1           Q.        Sure.  For example, you read in the  
2       complaint about the placement of the gas can, and  
3       you went online to confirm and to figure out where  
4       that was.  That would be an example, correct?

5           A.        Yes, that's correct.

6           Q.        And you've read over both the complaint  
7       and the search warrant, and spoken with Agent  
8       McGonigle about both of those, is that correct?

9           A.        Yes, I've discussed both of those with  
10      Agent McGonigle.

11          Q.        So for example, if you had any questions  
12       about something that was said in either one of those  
13       documents, you would have tried to clear it up with  
14       him so that you understand before testifying today,  
15       correct?

16          A.        Yes.

17          Q.        And I think you mentioned in response to  
18       Mr. Breslow's questions that you'd had some meetings  
19       before your testimony here.  Could you elaborate on  
20       who you met with in preparation for your testimony  
21       today?

22          A.        Yes.  Special Agent McGonigle, AUSA Steve  
23       Breslow, and trial attorney Risa Berkower.

24          Q.        They went over your testimony.  If there  
25       were questions about what was in the complaint

1 affidavit or search warrant affidavit, you would  
2 bring that up and you would straighten that out with  
3 them, correct?

4 A. Yes, I had the opportunity to ask  
5 questions.

6 Q. Right. I want to turn now first to the  
7 complaint, which is Exhibit 2 in front of you.

8 A. I thought you said Exhibit 1 was the  
9 criminal complaint.

10 Q. You're quite right, Exhibit 1.  
11 Specifically I want to turn to paragraph four of  
12 that exhibit. Are you seeing that in front you  
13 right now?

14 A. Yes, I do see it.

15 Q. Okay. I want to direct you to the second  
16 sentence here which reads, "The affidavit includes  
17 only those facts I believe are necessary to  
18 establish probable cause for the requested criminal  
19 complaint," correct?

20 A. Yes.

21 Q. It goes on to say, "It does not include  
22 all the facts uncovered during the investigation,"  
23 right?

24 A. Yes.

25 Q. Okay. You've been the affiant in many a

1 application for criminal complaint as well, right?

2 A. Yes.

3 Q. And that is something that you would put  
4 in your applications, your affidavits in support of  
5 a criminal complaint, correct?

6 A. Yes, I believe I've seen that language  
7 before.

8 Q. It's pretty ubiquitous, right?

9 A. Yes.

10 Q. But it does mean what it says and says  
11 what it means, that you're trying to include facts  
12 believed to be necessary to establish probable cause  
13 for the violations, right, for the criminal  
14 violations?

15 A. Yes.

16 Q. That complaint, Exhibit 1, goes on at  
17 some length about white supremacist organizations or  
18 a white supremacist organization, correct?

19 A. It does.

20 Q. Again, this was according to Agent  
21 McGonigle necessary to establish probable cause for  
22 the magistrate to issue an arrest warrant, correct?

23 A. I don't -- I'm not sure of all the exact  
24 reasons that Ryan included this. You know, I didn't  
25 ask him specifically how each paragraph or each

1 section was chosen to be included. That wasn't part  
2 of the discussions we had.

3 Q. But again, going back to what he said  
4 under oath in this affidavit, he's including only  
5 those facts he believes are necessary to establish  
6 probable cause, right?

7 A. Yes, it does say that.

8 Q. And of course you don't want to tell more  
9 about your case than you need to to get probable  
10 cause, right?

11 MR. BRESLOW: Objection, your Honor.

12 THE COURT: The basis?

13 MR. BRESLOW: This is not the special  
14 agent's affidavit. I think he's calling for  
15 speculation at this point.

16 THE COURT: I'm going to overrule the  
17 objection.

18 Q. So you understand he's saying that the  
19 facts in there are to establish probable cause,  
20 correct?

21 A. Yes.

22 Q. So turning to paragraph nine through 17  
23 in that affidavit, it goes on at some length about  
24 the white supremacist organization, correct?

25 A. Yes, it does.

1           Q.       And the violation at issue that you've  
2         looked at, violation of 844(d) and violation of  
3         844(i), both of those require an intent to destroy  
4         or intent to injure, correct?

5           A.       Could you specifically highlight the  
6         section you're reading on that?

7           Q.       Sure. 18 USC 844(d) says for a violation  
8         a person has to have, "Knowledge and intent that it  
9         will be used to kill, injure or intimidate any  
10        individual or unlawfully damage or destroy any  
11        building, vehicle or other personal property." Do  
12        you see that in the violation?

13          A.       Do you mind pointing out the paragraph  
14         that was from?

15          Q.       That's actually from the statute at  
16         844(d). I do believe it's also in the complaint  
17         at --

18                   MR. BRESLOW: Paragraph five, your  
19         Honor.

20          Q.       Paragraph five in the criminal complaint.

21          A.       Yes, I do see that now.

22          Q.       Okay. So one thing that is required for  
23         probable cause is some kind of evidence of a  
24         person's intent, why they would do something like  
25         this, is that fair to say?

1 MR. BRESLOW: Objection, your Honor.  
2 The objection is the question appears to be asking  
3 the special agent to talk about the elements of the  
4 offense, which is a legal question. The complaint  
5 speaks for itself.

6 THE COURT: Right. I think I will  
7 sustain that objection, Mr. Watkins.

8 Q. You just testified a moment ago that you  
9 have familiarity with white supremacist  
10 organizations generally?

11 A. That is correct.

12 Q. And you understand that people involved  
13 in white supremacist organizations regularly use  
14 hate speech in everyday conversations?

15           A.       I think that would be very common for  
16       many of those individuals to use that language.

17 Q. Racial slurs, same thing, they don't mind  
18 saying them and they'll say them loudly, correct?

19 A. Yes.

20 Q. They're quite open in their dislike of  
21 others due to race, religion and nationality, would  
22 you agree with that?

23           A.       I think many of them are open about it,  
24       perhaps not all of them though depending on their  
25       life situation.

1                   Q.       They are likely to express resentment of  
2       other races and creeds to others, is that a true  
3       statement?

4                   MR. BRESLOW: Your Honor, before the  
5       special agent answers, I'm going to object again.  
6       Before objecting I've allowed a number of questions  
7       along this line. It's beyond the scope really of  
8       the direct. We have not questioned Special Agent  
9       Boucher at all concerning paragraphs five through  
10      17. We haven't discussed white supremacy or  
11      anything like that.

12                  I think this is all just far beyond the  
13       scope of direct, far beyond the purpose of a  
14       preliminary hearing, and is venturing into really  
15       territory that shouldn't be inquired into of this  
16       agent at this hearing.

17                  THE COURT: So I think, Mr. Watkins,  
18       I will overrule this objection, but I'm going to  
19       limit further questions in this area. I think I get  
20       the point, so to speak.

21                  MR. WATKINS: Judge, this is  
22       introductory, but I would note the government has  
23       put in the complaint as evidence.

24                  THE COURT: Yes.

25                  MR. WATKINS: The complaint does

1 discuss it. The fact that they declined to question  
2 their witness on the stand has no relevance to  
3 whether this is the subject of cross-examination.  
4 Unless the government is disclaiming any reliance on  
5 Mr. Rathbun's alleged ties to white supremacy.

6 THE COURT: So I think I would say  
7 two things. It doesn't appear to be an element of  
8 the offense, of the two offenses with which  
9 Mr. Rathbun is charged, sort of religious animus at  
10 this point. Again, I agree with you that the  
11 affidavit is in evidence. I understand the point.  
12 I'm overruling the objection, but I think we're sort  
13 of at the end of what I need to hear on that point.

14 MR. WATKINS: I have one more  
15 background question and then I'll move on --

16 THE COURT: Thank you.

17 MR. WATKINS: -- to other issues  
18 related to it.

19 Q. Agent Boucher, you have read the  
20 affidavit in support for the search warrant of  
21 Mr. Rathbun's home, car and person, correct?

22 A. Yes, I've read that.

23 Q. That is also authored by Agent McGonigle?

24 A. Yes, that's correct.

25 Q. As to white supremacists and people who

1 are doing acts in support of white supremacy, he  
2 writes, "Users who take action such as planting an  
3 incendiary device would likely disclose that  
4 activity to other users so their status would be  
5 elevated within that of the community." Is that a  
6 fair statement given your training and experience in  
7 white supremacist groups?

10 THE COURT: I'm going to overrule the  
11 objection, but again, this is the last question in  
12 this area.

13 MR. BRESLOW: Your Honor, if  
14 Mr. Watkins could direct the agent to the particular  
15 paragraph that he's inquiring about just so that the  
16 agent could respond accurately.

19 MR. BRESLOW: On page 47.

20           A.       Yes, I have that in front of me. Can you  
21 repeat the question, please? I'm sorry.

Q. Sure. Agent McGonigle writes, "Based on my training and experience, and the experience of others involved in this investigation, I know that users who take action such as planting an incendiary

1 device would likely disclose that activity to other  
2 users so that their status would be elevated within  
3 that online community." Is that an accurate  
4 statement in light of your training and experience?

5 A. I see that Agent McGonigle wrote that.

6 My experience has been that it depends on the  
7 specific individual. Some people would want to gain  
8 status in the community, but some individuals might  
9 have the specific situation in their life where they  
10 would chose not to do so. I think it depends on the  
11 person.

12 Q. Sure. He's not saying everybody. He  
13 said, "Would likely disclose that." That's what he  
14 writes in paragraph 105, is that correct?

15 A. He does say that, yes.

16 Q. And is that true? Do you agree with that  
17 statement given your own training and experience?

18 A. I think many individuals in these white  
19 supremacy organizations do, are part of a community  
20 that they desire the gratification of having other  
21 individuals know that they've done these acts or are  
22 discussing these acts, but many individuals in these  
23 groups hide their identity and don't want people to  
24 know who they are when they're discussing these  
25 things.

1 Q. So on this point you are disagreeing with  
2 Agent McGonigle then?

8                   Q.         The affidavit goes on to describe two  
9 platforms, and this is the search warrant affidavit,  
10 correct? You understand that?

11 A. Yes.

Q. The point I'm talking about?

13 A. Yes, I do now.

14 Q. And it talks about each platform  
15 individually, and it also notes that as to the first  
16 platform, platform one, it has identified users and  
17 IP addresses of that platform. Do you see that in  
18 the affidavit?

19           A.     Do you mind pointing me to a specific  
20       paragraph number again? I generally know what  
21       you're discussing, but if you're talking about  
22       specific language, I'd like to see the paragraph.

23 Q. One moment.

24 (Pause.)

25 MR. BRESLOW: Mr. Watkins, maybe

1 paragraph 63 on page 35.

2 Q. Mr. Breslow is quite correct. Do you see  
3 paragraph 63?

4 A. I do.

5 Q. And then continuing on in 64, it begins  
6 to talk about -- this is actually for platform two,  
7 but we can go ahead and talk about that anyway.  
8 Platform two, all of the users -- as a result of  
9 this investigation, you turned up the IP addresses  
10 of all of the users of that platform, correct?

11 A. I do see these. Yes, I see the IP  
12 addresses and the users listed here, yes.

13 Q. Let me stop a little bit about IP  
14 addresses. IP addresses, you're familiar with your  
15 training and experience and investigation, correct?

16 A. Yes.

17 Q. IP addresses are addresses, but they're  
18 also the route of how to get to the address, is that  
19 true?

20 A. Yes, they're a tool that we utilize to  
21 sometimes identify the individual.

22 Q. Right. So they also have within them  
23 information that will narrow down the search to  
24 particular regions or particular places, even though  
25 you do not know what the name of the person is,

1 right?

2 A. Yes.

3 Q. To your knowledge, given your  
4 investigation of this case, any of those 27 people  
5 identified for whom IP addresses were provided, has  
6 any of them turned out to be in or around  
7 Longmeadow, Massachusetts?

8 A. I have not been involved in that aspect  
9 of the investigation, so I'm unable to answer that  
10 question. I haven't been included in that part of  
11 the investigation.

12 Q. Right. And indeed there's more  
13 information as to all of those users on that  
14 particular platform, platform two, which allows  
15 agents to identify who they are, right?

16 A. You know, looking at the information  
17 which you just highlighted, there are IP addresses  
18 and email addresses listed on some of them, yes.  
19 Those are tools that the FBI will utilize and can  
20 utilize generally to try to identify individuals.

21 Q. So in your conversations with Agent  
22 McGonigle then, there's been no indication that any  
23 of those people are John Rathbun, is that correct?

24 A. I haven't had discussions with Agent  
25 McGonigle about these individuals and their

1 potential identities.

2 Q. But as a trained investigator, you know  
3 that you could find out the identities given the  
4 amount of information that's in the search warrant  
5 affidavit, correct?

6 A. It is possible that the FBI will be able  
7 to take this information and identify those  
8 individuals behind them.

9 Q. In particular this is reflected in the  
10 search warrant affidavit at paragraph 24. It talks  
11 about one of the users of platform one talking about  
12 two possible choices for a target. Do you see that?

13 A. Yes, I do see it.

14 Q. And that information is repeated in the  
15 application for criminal complaint that was filed  
16 before Judge Robertson, correct?

17 A. Yes, it was.

18 Q. And that person has been identified, is  
19 that correct? Law enforcement knows who that is at  
20 this point?

21 A. Yes, I believe later on in this document  
22 the individual was identified.

23 Q. And arrested, correct?

24 A. I'm unaware that he was arrested. You'd  
25 have to point me to a specific paragraph. I don't

1 recall that.

2 Q. But regardless, we know who he is, and  
3 are you aware of any connection of that person with  
4 John Rathbun of Longmeadow, Massachusetts?

5 A. Again, I have not been party to  
6 discussions about this individual's connections  
7 potentially to the defendant. I just haven't been  
8 part of that investigation, so I can't really answer  
9 your question. I'm sorry.

10 Q. And when preparing for this hearing with  
11 Mr. Breslow and Agent McGonigle, nobody talked about  
12 any other evidence of white supremacist connections  
13 with Mr. Rathbun, is that correct?

14 A. No, I'm not aware of any of that sort of  
15 information.

16 Q. As Mr. Breslow indicated, he hasn't  
17 questioned you at all about what is in the actual  
18 application for complaint, correct?

19 A. Yes, that's correct, but I don't know  
20 what information the other agents and prosecutors  
21 have. I haven't been included on all of the  
22 discussions, so there is potentially information  
23 that I'm unaware of on this case.

24 Q. Sure. But you're the agent here  
25 testifying as to probable cause to continue this

1 case, that's true?

2 A. Absolutely.

3 Q. A few more questions about platform two.

4 Concerning how one becomes a member of the  
5 organization listed on platform two, in order to do  
6 that, one has to download specific software, has to  
7 sign in to the platform, and then must be invited to  
8 join, is that true?

9 MR. BRESLOW: Objection, your Honor.

10 This is at this point far beyond the scope of  
11 direct, far beyond the scope of the preliminary  
12 hearing.

13 MR. WATKINS: Judge, I just have a  
14 few more questions.

15 THE COURT: Yeah, two or three more  
16 questions, Mr. Watkins. Again, I understand the  
17 point. The contents of the affidavit in support of  
18 the criminal complaint are there, Mr. Breslow, and I  
19 think Mr. Watkins is entitled to point to those and  
20 ask questions about them.

21 MR. BRESLOW: I agree, your Honor,  
22 but if I understand his question correctly, he is  
23 asking about investigative techniques that the FBI  
24 may have conducted as to accessing platform two.

25 THE COURT: I think the focus of his

1 question is -- well, I'll let Mr. Watkins explain.

2 Q. So to become part of this discussion  
3 about a Jew nursery home in Longmeadow, one would  
4 have had to download the software, sign on to the  
5 platform, and been invited to the particular team  
6 that was discussing that, is that true?

7 A. Do you mind pointing me to the particular  
8 paragraph that you're referring to in this?

9 Q. Paragraph 96 of the search warrant  
10 affidavit.

11 A. Yes, I see that. Yes.

12 Q. The 27 people that are listed just before  
13 that paragraph, all of them downloaded the software,  
14 signed on to the platform, and had been invited to  
15 this conversation concerning Jew nursery homes,  
16 correct?

17 A. Yes.

18 Q. And then to get to -- there's mention in  
19 the criminal complaint about a calendar, Jew hating  
20 day on April 3rd. That was listed within platform  
21 two, correct?

22 A. Yes, that was part of the platform two,  
23 the specific organization.

24 Q. So all of those things are still true?  
25 In order to see that calendar entry, you would have

1 had to download software, sign on to the platform,  
2 invited to join the team, and then gone into the  
3 calendar in order to see that particular entry, is  
4 that true?

5 MR. BRESLOW: Objection, your Honor.  
6 I don't believe there's any foundation for beyond  
7 what the search warrant affidavit states, that this  
8 witness has any understanding of how platform two  
9 actually operates, and the affidavit speaks for  
10 itself.

11 THE COURT: It's not in evidence in  
12 this proceeding. You've chosen not to introduce it  
13 into evidence, Mr. Watkins. I think I am going to  
14 cut this off at this point.

15 MR. WATKINS: Your Honor, I would  
16 move it into evidence then if that is the objection.

17 THE COURT: If that's the basis. I  
18 believe it's under seal at this point. Portions of  
19 it are under seal.

20 MR. BRESLOW: Your Honor, we provided  
21 a redacted form of the exhibit which is under seal  
22 to the defense for discovery purposes. I don't have  
23 any objection to its provision to the Court in  
24 evidence under seal for purposes of the inquiry, but  
25 I do want to renew my objections that this is so far

1       beyond the scope of direct and the purpose of the  
2       hearing.

3               If Mr. Watkins could explain how this line  
4       of questioning would undermine the finding of  
5       probable cause, then perhaps we would have a better  
6       sense as to why this line of questioning should be  
7       continued.

8               THE COURT: It's intent, Mr. Breslow.  
9       He's focused on intent to harm, intent to injure. I  
10      believe that's what he's focused on. Mr. Watkins.

11              MR. WATKINS: You're exactly correct,  
12      your Honor. Again, the government, as this agent  
13      has testified, as Agent McGonigle testifies in his  
14      affidavit, the issue of white supremacist ties was a  
15      part of the probable cause showing before this Court  
16      for the arrest warrant. Unless the government is  
17      now disavowing that, then I need to continue to show  
18      why that should not be relied on for probable cause.

19              MR. BRESLOW: No, we're not  
20      disavowing any of it. I just don't understand how  
21      the introduction of this evidence or pursuit of this  
22      line of questioning somehow undermines the intent to  
23      harm, injure or intimidate as set forth in the  
24      statute.

25              THE COURT: Well, that is

1 Mr. Watkins' argument, Mr. Breslow.

2 MR. BRESLOW: For the record, we  
3 object.

4 THE COURT: Again, I understand where  
5 this is going, Mr. Watkins. I don't think we need  
6 to spend much more time on it.

7 MR. WATKINS: May I ask one more  
8 question about the calendar entry that is listed in  
9 there?

10 THE COURT: One more.

11 Q. In the criminal complaint, Agent Boucher,  
12 it talks about this particular calendar entry, about  
13 a Jew nursery home, correct?

14 A. I believe there was a misspelling.

15 Q. Right.

16 A. But yes, I recall what you're describing.

17 Q. And on that particular platform, eleven  
18 users were invited to that particular event, six  
19 users accepted, six of them are identified, and law  
20 enforcement now knows who they are, is that true?

21 A. Again, I am unaware of that aspect of the  
22 investigation. I'm not sure what the FBI or other  
23 law enforcement agencies have done to identify those  
24 individuals.

25 Q. I want to move on now to the execution of

1       a search warrant at Mr. Rathbun's house. In  
2 preparation for that, to go back to the search  
3 warrant affidavit for just a moment, Agent McGonigle  
4 wrote there, this is paragraph 123, "White  
5 supremacists frequently print material relating to  
6 their ideology and interest, including how to plan  
7 and conduct violent attacks," right?

8           A.     Yes, I see that.

9           Q.     And is that consistent with your own  
10      experience and training?

11          A.     Yes, absolutely.

12          Q.     So one might expect to find at a white  
13 supremacist's house hard copies of white supremacist  
14 matter, is that fair to say?

15          A.     It's very possible.

16          Q.     In fact, as Agent McGonigle points out,  
17 "White separatists frequently maintain this material  
18 for many years." Is that also true in your  
19 experience?

20          A.     I don't believe I've ever asked any  
21 specific white supremacist I've had the opportunity  
22 to interview how long they've kept that material  
23 for. I think with the advent of hard drives and  
24 things like that, you know, you can keep many  
25 documents for a lot longer. I think it's possible

1       that you create something, it could last for a long  
2       time.

3           Q.       And he writes specifically in the  
4       application for a search warrant, "Hard copies  
5       frequently being maintained for several years in  
6       addition to digital evidence." That's true?

7           A.       That is possible that an individual could  
8       keep hard copies of these materials that they're  
9       distributing.

10          Q.       Agent McGonigle, as I understand it, the  
11       search warrant, in addition to authorizing search of  
12       Mr. Rathbun's premises, himself and his truck, was  
13       also to get certain records from platforms one and  
14       two as well?

15          A.       Yes, that is correct.

16          Q.       And Agent McGonigle writes that the  
17       search warrant was designed to answer the question  
18       of whether Rathbun associated with those two  
19       platforms, right?

20          A.       Could you point me to that specific  
21       paragraph? What you're saying seems familiar, but  
22       before I agree, I'd like to see that in writing.

23                   MR. BRESLOW: Your Honor,  
24       Mr. Watkins, I think you're referring to page 46,  
25       footnote ten.

1 MR. WATKINS: No. Let's see.

2 THE COURT: No?

3 MR. WATKINS: I don't believe so.

4 Footnote ten?

5 THE COURT: On page 46.

6 MR. WATKINS: I do understand that.

7 I'm talking more generally.

8 Q. What you did expect or what Agent  
9 McGonigle expected was to find information about  
10 whether Mr. Rathbun associated with white  
11 supremacist groups and particularly these two  
12 platforms, correct?

13 A. Yes, that was one of the goals of the  
14 search warrant.

15 Q. And you're familiar with what was  
16 actually found at the search site?

17 A. No, I'm unable to answer that question.  
18 I was not present. I didn't go in the house and I  
19 haven't been briefed on the findings.

20 Q. So you didn't review any of the pictures  
21 that were taken there, review an inventory of what  
22 was taken out of the house, none of that?

23 A. No. The only photographs I've reviewed  
24 are the ones that the AUSA Breslow asked me to  
25 testify about.

1           Q.     So in your discussions with Attorney  
2     Breslow and with Agent McGonigle, had they told you  
3     about anything that was found at that house?

4           A.     No.

5                   MR. BRESLOW: Your Honor, I'd object  
6     only as to the aspect of the question that relates  
7     to any interaction between the attorney and the  
8     witness.

9                   MR. WATKINS: I'll rephrase it.

10          Q.     Did you learn that any Nazi flags were  
11     found at Mr. Rathbun's house?

12          A.     I have not learned that there were some  
13     found, but mostly because I haven't been briefed on  
14     what was found at all.

15          Q.     Did you learn about any pictures of  
16     Hitler being around Mr. Rathbun's house?

17          A.     I've had no discussions with anyone on  
18     the case of any of what was found in the house at  
19     all. I can't answer any of those questions.

20          Q.     You've testified before as a witness in a  
21     probable cause hearing, in previous cases?

22          A.     This is the first time I've testified in  
23     a preliminary hearing.

24          Q.     So no knowledge of the fact that no  
25     anti-Semitic literature was found? Places of

1       synagogues, mosques, religious sites, none of that  
2       you're aware of was found?

3 MR. BRESLOW: Your Honor, that's been  
4 asked and answered.

8 Q. Did you learn what devices were taken out  
9 of the house?

10           A.       I'll have the same answer. I haven't  
11       discussed with Agent McGonigle or any other law  
12       enforcement personnel any of the details or  
13       specifics of any items that were found in the house.

14 Q. So for example, you didn't learn that  
15 Mr. Rathbun does not own a computer?

16                    A.            No, I did not.

17 Q. The search warrant was for the person of  
18 Mr. Rathbun as well, correct?

19 A. Yes.

20 Q. Did you witness any tattoos on  
21 Mr. Rathbun?

22 A. I was not present on the search location.  
23 The closest I got to the residence was probably a  
24 few hundred yards away, and I could only see the  
25 activities of the individuals who were outside

1 standing in the lawn.

2 Q. In your training and experience in prior  
3 cases with white supremacists, is it true that white  
4 supremacists have a predilection for tattoos?

5 MR. BRESLOW: Objection, your Honor.

6 THE COURT: Sustained.

7 Q. Have you seen tattoos in prior cases on  
8 white supremacists?

9 MR. BRESLOW: Same objection, your  
10 Honor.

11 THE COURT: Sustained.

12 Q. Were you made aware of any bomb making  
13 items that were found in Mr. Rathbun's home?

14 MR. BRESLOW: Same objection, your  
15 Honor.

16 THE COURT: I'm going to overrule  
17 that objection.

18 A. I'm unaware of any bomb making materials  
19 found, but the answer to that, I haven't discussed  
20 any of the specifics with Agent McGonigle about any  
21 of the items that were found. So I'm not saying  
22 that they weren't there. I just don't know.

23 Q. You testified as to an interview of  
24 Mr. Rathbun at his home, correct?

25 A. Yes, I read the 302 drafted by Special

1           Agent McGonigle.

2           Q.     Correct. And that is -- let me ask you  
3     this. That interview, was it audio recorded or  
4     video recorded to your knowledge?

5           A.     I do not believe it was audio or video  
6     recorded.

7           Q.     Now, does the FBI have a protocol about,  
8     when a target is being interviewed, whether it  
9     should be audiotaped or videotaped?

10          A.     Yes, the FBI does.

11          Q.     And what does the FBI say about  
12     audiotaping and videotaping interrogations?

13          A.     The FBI has a policy that custodial  
14     interviews of individuals are audio and video  
15     recorded unless there's, you know, a reason to do  
16     otherwise, and it has to be approved by a higher  
17     level.

18          Q.     Here that didn't happen, right? As far  
19     as you know, it was not audiotaped or videotaped?

20          A.     Yes.

21          Q.     And of course in this day and age we all  
22     have smartphones, we all have devices that can both  
23     audiotape and videotape in our pockets, correct?

24          A.     Many, most individuals I would agree have  
25     smartphones today that have that capability to

1 record.

2 Q. And you certainly did, on the perimeter  
3 of the scene, you had your smartphone with you. You  
4 could have audiotaped or videotaped that interview  
5 with Mr. Rathbun if you had been asked to?

6 A. I mean, that's a hypothetical. My job on  
7 that search that day was not to be involved in the  
8 things going on in the house. So the answer as far  
9 as me being able to video record, I wasn't present.

10 Q. So for example, where you testified in  
11 response to Mr. Breslow's question about Mr. Rathbun  
12 seeming like he was about to cry, if we had  
13 audiotape, videotape, we could see what the context  
14 of that was and exactly what happened, would you  
15 agree with me?

16 MR. BRESLOW: Objection, your Honor.  
17 Beyond the scope of the preliminary hearing at this  
18 point.

19 THE COURT: Yeah. Again, I think the  
20 point has been made, Mr. Watkins. So I'm going to  
21 ask you to move on. I'm going to sustain the  
22 objection and ask you to move on.

23 Q. Two more questions about the statement.  
24 It is true, is it not, that Mr. Rathbun denied  
25 involvement, not only with placing the gas can, but

1 also any involvement with white supremacist groups?

2 A. Could you refresh my memory? Is this  
3 coming from the 302 interview of the defendant?

4 Q. Yes. I believe that it's also in the  
5 complaint.

6 A. Okay. Yes, I believe that he denied  
7 having anything to do with the device, and then also  
8 denied viewing anti-Semitic websites.

9 Q. Does that report also indicate that he  
10 consented to a DNA swab?

11 A. Yes, the report does state that.

12 Q. You talked about gas that was found in  
13 the garage and the gas cans. Mr. Rathbun's mother  
14 was also interviewed as part of the investigation,  
15 were you aware of that?

16 A. I believe I did hear that his mother was  
17 interviewed, but I was not provided with any of the  
18 details of what she stated. I do believe that she  
19 was interviewed though.

20 Q. So then you wouldn't know whether she  
21 corroborated Mr. Rathbun's statement about the gas  
22 being for tools that they had at the house?

23 A. No. All I could say is I knew she was  
24 interviewed, but I didn't know any of the details of  
25 what she said or didn't say.

1           Q.       What you can say is that they have a  
2       fairly small house on a fairly large plot of land,  
3       is that true?

4           A.       I mean, I guess the size of the plot is  
5       all relative, but they definitely have a yard with  
6       grass that I'm sure they mow, if that's what you're  
7       asking.

8           Q.       I want to move on now to talking about  
9       the gas can itself and the circumstances under which  
10      it was found. You testified about Molotov  
11      cocktails, and that's something you learned in your  
12      training and experience, correct?

13          A.       Yes, I've had some trainings describing  
14      Molotov cocktails.

15          Q.       Can you describe for us once again what  
16      the salient features, the important features of a  
17      Molotov cocktail are as you understand?

18          A.       A container which could hold an  
19      explosive, generally a liquid, that can be thrown  
20      and explode.

21          Q.       And I think you said before it also has  
22      to be breakable, right?

23          A.       Yes, that's correct.

24          Q.       And the paradigm is a glass bottle with a  
25      wick in it that has some ignitable liquid in it that

1 can be lit, thrown, it breaks, the fluid goes all  
2 over, wherever it's aimed for, and ignites because  
3 the wick is on fire. Is that a Molotov cocktail?

4 A. Yeah, that sounds like a good general  
5 description of a Molotov cocktail.

6 Q. So I want to put up for you now one of  
7 the pictures from Exhibit 2. This is the Longmeadow  
8 Police Department report this particular picture  
9 came from. Are you seeing it?

10 A. Yes, I do see that photograph.

11 Q. And that is the gas can at issue here,  
12 the one you described with the blood on the handle,  
13 correct?

14 A. Yes.

15 Q. So that container obviously is not glass,  
16 right?

17 A. The container is plastic.

18 Q. And it can't be thrown and broken, is  
19 that fair to say?

20 A. I would say generally that plastic is not  
21 as breakable as glass. I can't say that plastic is  
22 unbreakable, undestructive, no. I wouldn't feel  
23 comfortable saying that. I've had plastic things  
24 break.

25 Q. That's true. But going back to the

1 Molotov definition you talked about, breakable,  
2 likely glass, with a wick in it, small, can be  
3 thrown against a wall or into a place, right?  
4 Knowing that definition, do you think that this gas  
5 can qualifies as a Molotov cocktail?

6 MR. BRESLOW: Objection, your Honor.  
7 The statute has its own particular definitions, and  
8 the colloquial definition, whether proposed by  
9 Mr. Watkins or not, is not pertinent to whether the  
10 statutory definition here has been met.

11 MR. WATKINS: I have a variety of  
12 answers to that, your Honor.

13 THE COURT: Go ahead, Mr. Watkins.  
14 Let me hear from you.

15 MR. WATKINS: I'm sorry?

16 THE COURT: You say you have a  
17 variety of answers to that.

18 MR. WATKINS: Answer number one is  
19 that Mr. Breslow specifically asked about this  
20 witness' opinion about it being a Molotov cocktail,  
21 so I think he opened the door there. The Molotov  
22 cocktail allegation is repeated in the complaint  
23 affidavit as it is in the search warrant affidavit.  
24 So I think it's more than fair grounds for  
25 cross-examination and specifically cross-examination

1 of this witness.

2 MR. BRESLOW: Your Honor, if I may  
3 respond briefly.

4 THE COURT: Briefly.

5 MR. BRESLOW: I believe that  
6 Mr. Watkins in his first point is referring to my  
7 final questions to Special Agent Boucher about  
8 whether, based on his training and experience, if  
9 that object had contained gasoline and ignited,  
10 could it explode and harm others. I did not use the  
11 phrase Molotov cocktail, neither did Special Agent  
12 Boucher.

13 The only time that appeared in the direct  
14 examination was in reference to the police report  
15 where I believe it was another officer, either of  
16 the fire department or the police department, who  
17 had stated that in his view it appeared to be a  
18 Molotov cocktail. That's the first point.

19 Second point is the term explosive or  
20 incendiary device has a particular and very specific  
21 meaning in the statute. It's the statute that your  
22 Honor has to determine whether --

23 THE COURT: I agree, I have to  
24 determine whether or not this devices satisfies the  
25 statutory definition of an incendiary device.

1 Again, we've spent a lot of time on things that are  
2 really not central to whether or not there's  
3 probable cause.

4 MR. BRESLOW: And for those reasons  
5 we object.

6 Q. Mr. Boucher, you testified that you have  
7 had training and experience in explosives more  
8 generally?

9 A. Yes, I've had some general trainings on  
10 explosive. I would not qualify myself as an expert,  
11 nor the special agent to go through extensive  
12 training on explosives labeled bomb technicians. I  
13 am not one of those individuals.

14 Q. So for example, if I showed you this from  
15 Exhibit 2 again, this particular can, is there any  
16 significance to you that the spout is pointed out of  
17 the can rather than pointing into the can?

18 A. I have no training on the specifics of  
19 how a spout is pointed and what direction and the  
20 explosive capability that could mean.

21 Q. One more side note as we're going through  
22 this. You testified about the certification in  
23 Exhibit 7 from the manufacturer of the gas can.  
24 That's the Scepter affidavit.

25 A. Yes.

1           Q.     Is it true that the owner of the company  
2     also indicated that this particular can, once he  
3     observed a picture, was an older can? It's not in  
4     the affidavit.

5           A.     That's what I was looking for. Yes, I do  
6     recall having that conversation in my meetings with  
7     the attorneys and Special Agent McGonigle, that this  
8     was an older can that wasn't currently manufactured,  
9     but I do not see it here on the affidavit.

10          Q.     So as far as you know that is true, it's  
11     an older can?

12          A.     Yes, that's my understanding.

13          Q.     Do you know where this particular gas can  
14     is right now?

15          A.     The can itself? No, I do not currently  
16     know its location.

17          Q.     You know though that the FBI has a  
18     particular division, a particular center that deals  
19     with improvised explosives, right?

20          A.     Yes, there's a number of FBI units that  
21     deal with explosives.

22          Q.     One of them is the Terrorist Explosive  
23     Device Analytical Center, right, TEDAC?

24          A.     Yes, I'm familiar with TEDAC.

25          Q.     They do all kinds of tests on items to

1 see if they qualify as explosive devices, correct?

2 A. They do all sorts of tests on explosive  
3 devices. What specific unit qualifies something as  
4 an explosive, that I can't answer on the spot here,  
5 but they do testing.

6 Q. What you know is that the FBI has means  
7 to test this particular gas can and also simulate  
8 tests of an exploding gas can, correct?

9 A. Yes.

10 Q. Alcohol, Tobacco and Firearms, they are  
11 also an agency that deals with explosives on  
12 occasions?

13 A. Yes, my general understanding is that  
14 they do. The specifics of them I can't really  
15 answer to.

16 Q. Are you familiar that they do their own  
17 testings of particular vessels and containers in  
18 their investigations?

19 A. I generally know that they have a  
20 laboratory and have that capability. I have never  
21 directly worked with them on an investigation. So I  
22 can't speak to the specifics.

23 Q. Do you know that they've done an  
24 experiment with a five-gallon can where it was  
25 filled with gas to try to determine what happens

1           when it's lit on fire?

2 MR. BRESLOW: Objection, your Honor,  
3 based on the witness' prior statement.

10 MR. WATKINS: Your Honor, I would  
11 also say at issue here is whether it qualifies as an  
12 explosive device under the statute.

13 THE COURT: Sure.

14 MR. BRESLOW: Your Honor, I'll just  
15 add that each of the statutes as charged and set  
16 forth in the complaint allege attempts as well as  
17 completed acts.

18 THE COURT: Right.

19 MR. WATKINS: Nevertheless, one has  
20 to -- the government must prove and show on a  
21 probable cause basis that a particular device  
22 qualifies under the statute.

23 THE COURT: Yes.

24 MR. WATKINS: I'll move on.

25 Q. Agent Boucher, I want to put up for you

1       Exhibit 10, which was the street view. Do you  
2 recognize this?

3           A. Yes, I do recognize it.

4           Q. I'm also going to go back to Exhibit 9  
5 which we saw before as well. Now, both of these  
6 exhibits, Exhibit 9 and Exhibit 10, you produced  
7 using Google Earth, right? Or Google Maps, correct?

8           A. Yes, that's correct.

9           Q. And you used Google Maps because that's a  
10 reliable way to map out and show things, right?

11          A. You know, with the pandemic I was working  
12 from home that day, and that's the mapping software  
13 I had available to me. That's why I used it.

14          Q. Right. Again, that is something that  
15 it's reliable enough to be able to orient oneself  
16 about where things happened, is that fair to say?

17          A. Yes.

18          Q. So I'm going to now put in front of you  
19 Google Earth, and based on your -- that's very much  
20 similar to that map that we just saw as Exhibit 9,  
21 right, the overview?

22                   MR. BRESLOW: Your Honor, before the  
23 agent answers, I think Mr. Watkins is displaying at  
24 least if not introducing a new exhibit. Although  
25 similar, I just want for the record to request that

1       Mr. Watkins somehow create the exhibit so that it  
2       can be included as part of the record.

3                    MR. WATKINS: I wasn't intending to  
4       enter it as an exhibit. It was simply to clarify  
5       what the agent told us.

6                    THE COURT: I don't understand.

7                    MR. WATKINS: So I am showing --  
8       maybe if I can do a few introductory questions and  
9       then I'll get to it, and perhaps this will answer  
10      the Court's question.

11                  THE COURT: All right.

12                  Q.     Agent Boucher, do you recognize what's  
13       displayed on this map?

14                  A.     Yes, it appears to be a map of a portion  
15       of Longmeadow, Massachusetts. I see Ruth's House, I  
16       see Converse Street. Yes, it appears to be a  
17       similar view of the map we looked at before.

18                  Q.     Right. And you pointed out before on  
19       Exhibit 9 this is where the device was located. You  
20       talked about JGS Lifecare, you talked about Genesis  
21       House being really over here, you talked about  
22       assisted living being over here, correct?

23                  A.     Yes.

24                  Q.     And then when you made Exhibit 9, you did  
25       exactly what I'm doing here, which is the street

1 view aspect of it, right?

2 A. That's correct.

3 MR. BRESLOW: Your Honor, I'm sorry.

4 With respect to Mr. Watkins, I just don't know how  
5 the references to here and here and there --

6 THE COURT: It won't show up on the  
7 record, Mr. Watkins.

8 MR. WATKINS: I'll try do better on  
9 identifying.

10 Q. This is the street view from the corner  
11 of Converse and Ruth's House Drive, similar to what  
12 was in Exhibit 10, correct?

13 MR. BRESLOW: Your Honor, I'm going  
14 to object to Mr. Watkins using this without -- we've  
15 had an opportunity to prepare exhibits and share  
16 them. I don't mind a brief recess for Mr. Watkins  
17 to prepare and mark the exhibits. I'm likely not to  
18 have any objection to their introduction, but I just  
19 think proceeding this way is highly problematic.

20 THE COURT: So Mr. Watkins, is there  
21 a reason why we can't go back to Exhibits 9 and 10?

22 MR. WATKINS: Yeah, let's try it that  
23 way then.

24 THE COURT: Thank you.

25 Q. I'm showing you now Exhibit 9, and I'm

1 going to focus in here a little bit. Mr. Breslow  
2 pointed out where that pin is. That's a pin that  
3 you put in on Google Maps, right?

4 THE COURT: We're not seeing  
5 Exhibit 9 on the screen.

6 MR. WATKINS: Oh, I'm sorry. Are you  
7 seeing Exhibit 9 now?

8 THE COURT: Yes.

9                   Q.         So Agent Boucher, you see where this gas  
10          can was placed?

11           A.       Yes, I see the pin on the corner of  
12         Converse and Ruth's, which I placed there to  
13         approximately show the location of the yellow gas  
14         can.

15 Q. Now I want to direct you to complaint  
16 paragraph 18.

17 A. Yes, I'm there.

18 Q. That indicates that this gas can was  
19 placed approximately 50 yards from the Ruth's House  
20 facility, right?

21 A. Yes.

22 Q. So on the map you pointed out Ruth's  
23 House being up at the top of this circle, is that  
24 correct?

25 A That is correct

1           Q.       Have you yourself walked the distance  
2         from here up to Ruth's House?

3           A.       No, I have not. I have not walked it,  
4         nor have I measured the distance.

5           Q.       In the affidavit it is listed as 50  
6         yards. To your knowledge and experience -- well,  
7         let me ask you this. Have you ever been to the  
8         corner of Converse Street and Ruth's House Drive?

9           A.       I have driven on Converse Street so I've  
10         driven by it, but I have not specifically stopped  
11         and investigated that particular corner.

12          Q.       So would it surprise you that Ruth's  
13         House Assisted Living facility is actually  
14         two-tenths of a mile away from Converse Street?

15          A.       I mean, if you're telling me that's how  
16         far away it is, I'm guessing it wouldn't surprise  
17         me. But no, I have not.

18          Q.       And in the affidavit, paragraph 18, that  
19         was what Agent McGonigle was referring to was the  
20         Ruth's House Assisted Living facility, correct?

21          A.       It says Ruth's House here in paragraph 18  
22         and it says it is 50 yards from Converse Street.  
23         That does read that.

24          Q.       So if it were actually .2 miles away,  
25         that would be an error in the complaint affidavit,

1 right?

2 A. There appears there's some sort of  
3 discrepancy, yes, if what you're saying is accurate  
4 and it is two-tenths of a mile.

5 Q. So then going back to Exhibit 10, here is  
6 where the gas can was found behind this tree.

7 A. I'm sorry. I can't see.

8 Q. Oh, I'm sorry again. Behind this tree is  
9 where the gas can was put?

10 A. Yes.

11 Q. You've noted that there's housing over  
12 here to the right of the picture?

13 A. Yes, that's correct. The housing that  
14 you're pointing to with the pointer, that would be  
15 described as Genesis House from my understanding.

16 Q. And this area over here, no houses there?  
17 That's just woods quite a ways down, is that  
18 correct?

19 A. I believe that is wood frontage there,  
20 and behind that kind of, that's where the nursing  
21 home is.

22 Q. And you can see that up there some many  
23 yards away, true?

24 A. Yes.

25 Q. So the two violations that you're

1       testifying to here, 844(d) and 844(i), they require  
2       intent to kill, injure or intimidate a person. What  
3       is the basis of your conclusion that placing a gas  
4       can here could kill, injure or intimidate someone?

5           A.       So the sidewalk which you can see in the  
6       image you're showing I would say is approximately  
7       six feet away from where the gas can was placed, and  
8       the gas can was probably also placed maybe  
9       approximately six feet away from the street and  
10      entrance to Ruth's House.

11                  From reading the complaint and affidavit,  
12       it is clear that the grounds of Ruth's House were  
13       used by residents to walk, and that's an entrance  
14       that I'm sure employees and visitors and residents  
15       use to come and go, and that sidewalk along Converse  
16       Street I'm sure is used by many town residents to  
17       walk. So I would say that is in the vicinity of  
18       those thoroughfares I just described.

19                  Q.       I understand from the complaint and your  
20       testimony that the government's theory is someone  
21       tried to light that can and was unsuccessful, is  
22       that correct?

23                  MR. BRESLOW: I'm sorry. I just  
24       didn't understand the last part of Mr. Watkins'  
25       question. Could Mr. Watkins please repeat it before

1       the witness answers, as to the government's theory?

2           Q.     As I understand the government's theory  
3     as outlined in the complaint, an individual tried to  
4     light the paper in that spout with the intent to  
5     blow up that can at that site, is that true?

6           A.     I think the individual who lights a wick  
7     inside a gas can does have the intent to set off the  
8     gasoline inside the can, to have it ignite.

9           Q.     So the person that lit off this wick, in  
10    this case a small piece of paper in that gas can,  
11    would have been close by himself, is that correct?

12          A.     I don't have the training or expertise to  
13    speak to if somebody has six inches of paper wick,  
14    how long that would take to burn down, to touch the  
15    gasoline. I don't have that training or expertise  
16    to be able to answer that question.

17          Q.     But you burn pieces of paper yourself,  
18    right? We all have.

19          A.     Yes, I've set paper on fire.

20          Q.     In order to place -- if one were to drive  
21    to this location in a car, there is no place to  
22    really park on Converse Street? As you mentioned,  
23    it's a very busy street, is that correct?

24          A.     The street doesn't have a designated  
25    parking area, no.

1           Q.       There are parking spaces up here as we  
2 can see in the picture, right?

3           A.       Yes, I think there's many parking areas  
4 on the JGS campus.

5           Q.       But there's no place to park here? A car  
6 stopped here would simply block an entrance or an  
7 exit, is that true?

8           A.       If you were to put your car there, it  
9 would block. Stop it and put it in park, yes, it  
10 would obstruct the entrance.

11          Q.       So for example, a person stopping there,  
12 getting out of the car to get in the back to get a  
13 gas can, putting it over there and lighting it, and  
14 then coming back to the car, that would block that  
15 driveway?

16          A.       Yes. I mean, what you described I would  
17 think could be done fairly quickly, but for a short  
18 time it would either obstruct the driveway or, you  
19 know, they could have pulled their car along the  
20 sidewalk. I mean, there's many places somebody  
21 could park their car there. It's pretty wide open,  
22 but they would have to have left their car.

23          Q.       So where else would they have parked  
24 their car?

25          A.       I mean, you could have pulled right up on

1       the sidewalk there. You could have parked on the  
2       grass strip there along Converse. They could have  
3       pulled into Ruth's House and parked along the stop  
4       sign there. You know, I think this isn't a  
5       congested thoroughfare that there's limited parking  
6       like an inner city. This is pretty wide open.

7           Q.     Just to be sure, you testified you agreed  
8       with Agent McGonigle's characterization of Converse  
9       Street as being a busy thoroughfare, correct?

10          A.     In the relative terms of Converse Street  
11       being a main street in Longmeadow, Massachusetts,  
12       yes. Relative to an LA highway, no.

13          Q.     Lastly, the actual contents of the gas  
14       can were emptied out by the Longmeadow Police  
15       Department?

16          A.     That is correct.

17          Q.     Do you know where the contents of the gas  
18       can are?

19          A.     The last I was informed, the contents of  
20       the gas can were currently pending testing to  
21       confirm the liquid.

22          Q.     Right, to find out what exact -- so  
23       today, other than the chief of the fire department  
24       saying it smells like gasoline, you have no personal  
25       knowledge of what the substance in the can actually

1 is?

2 A. My recollection is the deputy chief of  
3 the police department said in their training and  
4 experience believed it was gasoline, but other than  
5 that, I have no specific knowledge of the actual  
6 chemical compound of the substance.

7 Q. So for example, if it were water in  
8 there, that would no longer be an explosive device,  
9 is that true?

10 A. Again, I'm not a chemist, but two parts  
11 to your question there. One is if it was water, I  
12 believe they would have been able to tell based on,  
13 you know, the feel and smell that it was not  
14 gasoline. Gasoline has a very distinct odor. As  
15 far as -- I'm sorry. Could you repeat the question  
16 again?

17 Q. No, I think that's enough. The answer is  
18 we don't know. Nobody knows what's in that can, is  
19 that correct?

20 MR. BRESLOW: Objection, your Honor.

21 Q. Nobody involved in the investigation has  
22 come to a conclusion about what is in that can, is  
23 that true?

24 MR. BRESLOW: Same objection, your  
25 Honor.

1                   THE COURT: There is some evidence  
2 about what is in the can. There is some evidence.  
3 You may argue there's not sufficient evidence, but  
4 there is some evidence.

5                   MR. WATKINS: I have no further  
6 questions.

7                   THE COURT: All right. I want to  
8 hear from counsel, but I'm concerned that we have a  
9 limited -- we may have a somewhat limited window of  
10 opportunity for Mr. Rathbun to observe these  
11 proceedings. Ms. Rivera, do you have any further  
12 information on how long we can go before we're going  
13 to be cut off by the Hampden County House of  
14 Correction?

15                  THE CLERK: Your Honor, the last time  
16 that I emailed with them, they said we have three  
17 hours, which means we have approximately 36 minutes  
18 left.

19                  THE COURT: So counsel, we must do  
20 this in Mr. Rathbun's presence. Mr. Breslow, do you  
21 have any further questions? But I'm reminding you  
22 that we are limited in our time.

23                  MR. BRESLOW: Right. Your Honor, I  
24 really want to balance Mr. Rathbun's right to be  
25 present for this and the Court's concern for time.

1 I have just a few, very few questions, if I may,  
2 your Honor. Maybe about five minutes worth, if  
3 that.

4 THE COURT: Five is going to be a  
5 little long. If you can make it quicker than that.

6 MR. BRESLOW: Sure, I will.

7 THE COURT: Thank you.

8 MR. BRESLOW: Can I just take a half  
9 a minute to orient myself, your Honor?

10 THE COURT: Yes. Yes, Mr. Rathbun.  
11 Ms. Rivera, let's let Mr. Rathbun speak briefly.

12 CORRECTIONAL OFFICER: Hi there. If  
13 you need a little more time, that's fine.

14 THE COURT: So we will have up to 45  
15 minutes more?

16 CORRECTIONAL OFFICER: Sure, whatever  
17 you need.

18 THE COURT: Thank you very much, sir.

19 THE DEFENDANT: Thank you, ma'am.

20 THE COURT: Thank you, Mr. Rathbun.  
21 Mr. Breslow, proceed.

22 REDIRECT EXAMINATION BY MR. BRESLOW

23 Q. Special Agent Boucher, do you remember  
24 being asked a series of questions by Mr. Watkins  
25 about white supremacy and neo-Naziism, all generally

1       apparently relating to intent in his  
2       cross-examination?

3           A.     Yes, I do recall that.

4           Q.     So I just want to ask you a few basic  
5       questions again. With respect to the device,  
6       approximately how many feet was it located to a  
7       widely used pedestrian walkway, the sidewalk along  
8       Converse Street?

9           A.     I would say approximately six feet.

10          Q.     And approximately how many feet was it  
11       located to the main entrance of JGS that leads to  
12       Ruth's House and the nursing home and other  
13       facilities?

14          A.     Again I would say approximately six feet.

15          Q.     Do you remember being asked questions  
16       concerning Molotov cocktails and breakable  
17       containers, including glass containers?

18          A.     Yes, I do recall.

19          Q.     Recognizing that you're not a specialist  
20       in this area, do you have an opinion based on your  
21       training and experience that if ignited, if this  
22       five-gallon container did consist of gasoline and  
23       the gasoline did ignite, that it could break and  
24       explode?

25          A.     Yes. Gasoline is dangerous and

1       explosive. You know, I think many individuals have  
2       experience with accidentally setting themselves on  
3       fire with gasoline and causing explosion by  
4       accident.

5           Q.     Do you remember being asked a series of  
6       questions concerning what items might be found at  
7       the search site, including hard copies of white  
8       supremacist literature and other evidence indicating  
9       intent to harm other people?

10          A.     I do recall those questions.

11          Q.     And just to be clear, have you seen the  
12       search warrant inventory or any search warrant  
13       photos, or do you have any other information about  
14       what the agents actually gathered from the house?

15          A.     No, I have seen none of those things. I  
16       have no information about any of the items that were  
17       seized or photographed or viewed on site during the  
18       search.

19          Q.     And were you aware that some computer  
20       equipment was taken from the home or from  
21       Mr. Rathbun himself personally?

22          A.     No, I'm not. I was not informed what  
23       computer devices were located in the residence, nor  
24       what was seized.

25          Q.     Okay. Do you remember being asked

1       certain questions concerning Mr. Rathbun's potential  
2 participation on the platforms that were specified  
3 in the search warrant affidavit?

4           A.     Yes, I do recall it.

5           Q.     I want to focus your attention on the  
6 criminal complaint, in particular footnote one, page  
7 five. Do you see that?

8           A.     Yeah, it's on the screen.

9           Q.     Okay. And can you just read it aloud to  
10 the Court and to the public?

11          A.     "The FBI has not yet determined whether  
12 Rathbun has been involved in any way with the  
13 organization or in any other white supremacist  
14 activities. The FBI's investigation is ongoing."

15          Q.     And is that true -- this was written on  
16 April 15th, 2020, but is that statement still true  
17 today as to both of those sentences?

18          A.     Yes, to my understanding and knowledge  
19 both of those statements are still true.

20          Q.     And do you remember being asked questions  
21 about the search warrant affidavit, paragraph 123,  
22 and in particular whether there were any hard copies  
23 of white supremacist material?

24          A.     Yes, I do recall it.

25          Q.     Can you take a look at paragraph 123 of

1       the search warrant affidavit again?

2           A.       Give me one minute. I have it in front  
3       of me.

4           Q.       And does the first sentence in the  
5       paragraph state that, "Individuals frequently use  
6       the internet and computer equipment to possess,  
7       collect, receive, distribute, store and print  
8       material relating to their particular ideologies and  
9       interests"?

10          A.       Yes, it does read that.

11          Q.       That's a fair statement, you would agree?

12          A.       Yes.

13          Q.       Do you remember being asked questions  
14       about custodial interviews and the FBI's policies to  
15       record custodial interviews?

16          A.       I do recall those questions.

17          Q.       Now, you weren't present for the actual  
18       interview of Mr. Rathbun, correct?

19          A.       No, I was not.

20          Q.       However, was Mr. Rathbun arrested before  
21       the interview?

22          A.       No, he was not.

23          Q.       Was he arrested -- do you know when in  
24       fact he was arrested?

25          A.       Based on the context of reading the

1       complaint, I can see that information taken from the  
2       interview was used in it, so from the sequencing  
3       there, my understanding is he was arrested after the  
4       interview was conducted.

5                   MR. BRESLOW: I just want to consult  
6       with my cocounsel for a moment, your Honor, but I  
7       don't believe I have any other questions. Can I  
8       just consult with Mr. Berkower for a moment?

9                   THE COURT: Yes. So Ms. Rivera, can  
10      you facilitate that?

11                  MR. BRESLOW: No, that's okay.  
12      Ms. Berkower can simply send me a text message.

13                  THE COURT: All right. Mr. Breslow,  
14      we're still seeing the complaint affidavit on the  
15      screen.

16                  MR. BRESLOW: Am I sharing it, your  
17      Honor? I can't see anybody right now.

18                  THE COURT: I think you are.

19                  MR. BRESLOW: I don't know if  
20      Mr. Watkins is sharing it or I am. Oh, I am. I see  
21      it. I'm sorry. I'll stop sharing that, your Honor.  
22      I just have one or two questions about the -- your  
23      Honor, I have no further questions.

24                  THE COURT: Thank you. Mr. Watkins,  
25      anything further? It would have to be very brief.

1                          MR. WATKINS: Just as to that last  
2 point.

3                          RECROSS-EXAMINATION BY MR. WATKINS

4                 Q.       So you understand that at that search on  
5 April 15th, you and Agent McGonigle and all the  
6 other agents had a search warrant to search the  
7 home, his house, and the person of Mr. Rathbun, is  
8 that correct?

9                 A.       Yes, that is correct.

10                Q.       So Mr. Rathbun was going to be held there  
11 in order to execute the search warrant, is that  
12 correct?

13                A.       From reading --

14                          MR. BRESLOW: Objection, your Honor.

15                          THE COURT: I'm sorry. Did you  
16 object?

17                          MR. BRESLOW: I did. I object to the  
18 foundation. I'm not aware that he has any knowledge  
19 about whether or not, if this is the inquiry,  
20 whether or not Mr. Rathbun was in custody. That's  
21 really the subject of a suppression hearing, if  
22 anything, and I don't think there's a proper --

23                          MR. WATKINS: Mr. Breslow just asked  
24 his opinion about whether Mr. Rathbun was in custody  
25 or not.

1                   MR. BRESLOW: What I asked was had he  
2 been arrested prior to the interview.

3                   THE COURT: Whether he had been  
4 arrested formally.

5                   MR. WATKINS: Of course the issue is  
6 whether he was in custody rather than whether he was  
7 arrested, but we'll leave that for another day.

8                   THE COURT: Well, he waived his  
9 Miranda rights, so I don't know if that really is  
10 the issue, Mr. Watkins. Your point was if he was in  
11 custody, they were required to record the interview.

12                  MR. WATKINS: Exactly.

13                  THE COURT: Okay.

14                  MR. BRESLOW: And my only point, your  
15 Honor, is that may be a proper subject for a  
16 suppression hearing, but it's certainly not here.

17                  THE COURT: In any event,  
18 Mr. Watkins, I think it's a fairly peripheral  
19 question with respect to probable cause.

20                  MR. WATKINS: I only went into it  
21 because Mr. Breslow did, but I think you're right.

22                  THE COURT: Okay. So counsel, this  
23 will be the government first, so I will hear from  
24 you, Ms. Berkower, on the question of probable  
25 cause.

1 UNITED STATES OF AMERICA  
2 DISTRICT OF MASSACHUSETTS  
3 CITY OF SPRINGFIELD

7 I, Sarah L. Mubarek, Registered Professional  
8 Reporter, hereby certify that the foregoing is a  
9 true and accurate transcript of my stenographic  
10 notes to the best of my knowledge and ability.

11

12

13

14 /s/Sarah L. Mubarek  
Sarah L. Mubarek  
Registered Professional Reporter

DATED: June 12, 2020

10

10

20

21

22

23

24

25